

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10385-lgb

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5 In the Matter of:

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7 TV AZTECA, S.A.B. DE C.V.,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 August 28, 2023

16 10:00 AM

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21 B E F O R E :

22 HON LISA G. BECKERMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KS

1 HEARING re Motion to Dismiss Involuntary Petition / Motion
2 to Dismiss Involuntary Chapter 11 Petitions

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Court is now in
3 session. I'm going to go ahead and call the case, and when
4 I do, I'll ask the attorneys to please put their appearances
5 on the record. I'll warn the attorneys that in order to be
6 recorded in this courtroom, you actually have to stand up at
7 the podium. So if you try to use your mics there, it's not
8 going to record for purposes of our record. So appreciate
9 if you'd come up there. All right. Case Number 23-10385,
10 TV Azteca, S.A.B. de C.V. May I have appearances, please?

11 MR. CLAREMAN: Good morning, Your Honor. Billy
12 Clareman, from Paul, Weiss, on behalf of TV Azteca and the
13 alleged debtors. I'm joined at the table by Kelley Cornish
14 and Jay Cohen, my partners from Paul, Weiss.

15 MR. COHEN: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. CLAREMAN: Thank you.

18 MR. QURESHI: Good morning, Your Honor. Abid
19 Qureshi, Aiken Gump Strauss Hauer Feld, on behalf of
20 petitioning creditors and the indenture trustee. With me
21 are Michael Stamer, Sarah Schultz and David Giller. Thank
22 you, Your Honor.

23 THE COURT: Thank you.

24 MR. RUDEWICZ: Good morning, Your Honor. Daniel
25 Rudewicz, on behalf of the United States trustee.

1 THE COURT: Thank you, Mr. Rudewicz. It's
2 actually nice to see you in person. I see you a lot on
3 Zoom.

4 MS. SKIPSEY: Good morning, Your Honor. Katherine
5 Anne Boy Skipsey, on behalf of Diamond Films.

6 THE COURT: Thank you.

7 MR. PLAZA: Good morning, Your Honor. Curtis
8 Plaza, from Riker Danzig, on behalf of The Bank of New York,
9 as indenture trustee.

10 THE COURT: Thank you. Good morning.

11 MR. PLAZA: Thank you. Good morning.

12 THE COURT: Nice to see you again in person. All
13 right. So I just had a few questions I thought that we
14 could talk about in terms of housekeeping and how this will
15 go today and then after that we can get started. So my
16 first question for you, Mr. Clareman, was it wasn't clear to
17 me from the back and forth with my law clerk whether you had
18 an additional -- you were going to go ahead and call the
19 executive from the company or you weren't. So I thought I
20 would ask so I knew what I should expect.

21 MR. CLAREMAN: Yes. So we have reached an
22 agreement -- oh, the podium.

23 THE COURT: Yes, up there.

24 MR. CLAREMAN: So we are not planning to call Mr.
25 Rodriguez live. We have reached an agreement with the

1 petitioning creditors' counsel to submit his deposition
2 testimony. He was deposed last Thursday. So that will be
3 submitted to the Court in full in lieu of a cross-
4 examination --

5 THE COURT: Okay.

6 MR. CLAREMAN: -- rather than live.

7 THE COURT: All right. That's helpful to know.
8 Thank you. Okay. Next question I will ask is I obviously
9 noticed that there were -- while parties agreed on most
10 exhibits, which was helpful, there are obviously some
11 exhibits in dispute. So people have different ways they
12 like to handle that from my experience. I sort of have my
13 way, but that doesn't mean I'm not open to other people's
14 ways also. So my way is usually that I will deal with that
15 when we get to the evidentiary portion of the hearing.

16 I'm willing to do it at the close of the person,
17 the evidentiary record for that side, me dealing with it
18 then before we move on to the next side. I'm also happy to
19 do it at the beginning if the parties want to do it for both
20 sides that way or if somebody feels they want to handle it
21 at the beginning before they get into their witness
22 testimony on their own side for their own particular issues.
23 So I don't know what you all have discussed or how you all
24 had an idea about, I guess, approaching the issue.

25 MR. CLAREMAN: Yes. So I believe -- and someone

1 from my side should tug on coat if this isn't correct, but I
2 believe we have an agreement actually on all of the
3 exhibits.

4 THE COURT: Oh, wow. Okay.

5 MR. CLAREMAN: Yes. It'll make it a lot easier.
6 There are a number of -- so all of the exhibits will be --
7 by agreement between the parties, will come into evidence.
8 There were a number of relevance objections.

9 THE COURT: And a couple of authentications.

10 MR. CLAREMAN: Right, and rather than argue
11 admissibility as to those, we will simply argue on the
12 merits that materials are irrelevant or should not be
13 credited and treat that as a merits issue as opposed to an
14 admissibility issue.

15 THE COURT: Okay, and then I have one particular
16 exhibit I had a question about. So let me just see if I can
17 find this. And it's just because of the way that the case
18 law is in our district, so I just wanted to make sure that
19 the parties were all right with this, which it sounds like
20 they are. But for the record, I actually need to actually
21 ask this for the record.

22 MR. CLAREMAN: Okay.

23 THE COURT: So in Exhibit 128, which is one of the
24 reports for the corporation, the annual report, it's all in
25 Spanish, and at the very back there's literally four

1 paragraphs in English. Under our Second Circuit rules,
2 generally the rule, as you know, is that we would have to
3 have a full English translation of the document to be put
4 into evidence. However there is a case here in our court
5 where Judge Chapman actually had determined that if the
6 parties were in agreement and they weren't planning on
7 relying on the rest of the documents in question, that it
8 was fine to go ahead and just admit a very limited portion
9 in English. And so I wasn't sure if the parties had
10 discussed that because it obviously jumped out at us when we
11 were reviewing the exhibits, which you would imagine we did.

12 So I just wanted to make sure that everybody was
13 all right with that and also that, for the record, the
14 Debtor was not -- because I believe this is the alleged
15 Debtor's exhibit that they were planning on using. But I
16 could be wrong -- that whatever party was planning on using
17 this, that they only were planning on referring to, for
18 purposes of the evidentiary record, the part that was
19 actually translated into English. If they weren't, then I
20 would have to have a full English translation that was
21 provided to me in order for me to accept the document into
22 evidence or if there were other sections that the parties
23 were going to use other than just those particular
24 paragraphs, let's say there were ten paragraphs instead of
25 the four I had that people wanted to use. As long as I had

1 those in English, I would accept that too, as long as the
2 parties are fine. It was something that jumped out when we
3 reviewed the documents. And it is generally contrary to
4 Second Circuit case law with the exception, as I said, of
5 this one particular case that I'm happy to rely on, that
6 Judge Chapman found an exception for in circumstances where
7 there was a real limited necessity for using a non-English
8 document and only using a very small portion in English. So
9 that's why I wanted to make sure I raised that with the
10 parties.

11 MR. CLAREMAN: Yes. So I believe that it is the
12 case that the portion that the parties would direct the
13 Court to -- so in terms of what's here, why don't I put it
14 this way. The parties will only rely on portions that have
15 been translated into English. I believe there will be at
16 least one very short supplementation to what is in the
17 binder currently, but we will provide that. And ultimately
18 anything that either party wants to rely on, we'll ensure an
19 English translation is in the record.

20 THE COURT: Okay. That's fine. So just for the
21 record, obviously I will only rely on the English
22 translation portion, and I will only consider that for
23 purpose of the evidentiary record and to the extent that's
24 supplemented by further English paragraphs and the
25 translations of further paragraphs in the document, that's

1 fine as well, before the record is closed. And I'm going to
2 go ahead and allow that, even though, as I note, general
3 Second Circuit case law doesn't permit that.

4 But I felt here, this is a very long document,
5 while we're lucky in my chambers in that I have a native
6 Spanish speaker and also I lived in South Florida and have
7 some Spanish familiarity, nonetheless this is a long
8 document. And when I looked at what was being utilized, we
9 felt we had to look at why that was the case or whether
10 there was a basis for my doing something that was different
11 than the general rules in the Second Circuit. And as I
12 said, I'm happy to rely on that particular case and allow it
13 in. Just saying that for purposes -- when we get to it,
14 I'll make sure to say that again, but just raising this
15 upfront.

16 MR. CLAREMAN: Thank you.

17 THE COURT: Okay. That's fine. All right. Was
18 there anything else on the housekeeping nature that people
19 wanted to raise up front? I remember that we had discussed
20 that opening statements were going to be 30 minutes.

21 MR. CLAREMAN: I think 15 minutes.

22 THE COURT: Fifteen minutes, was it? Sorry.
23 That's what I remember. All right. Fifteen minutes. Okay.
24 That's fine. And is there anything else we needed to
25 discuss before we get to opening statements?

1 MR. CLAREMAN: Yes, I believe there are
2 supplemental exhibits that we'd like to hand up. I'm going
3 to turn the podium over to Amy Barton from Paul, Weiss.

4 THE COURT: Okay. Sure. Good morning, Ms.
5 Barton.

6 MS. BARTON: Good morning, Your Honor. Yeah. We
7 just have a couple of supplemental joint exhibits. There's
8 no objections to any of them.

9 THE COURT: Okay.

10 MS. BARTON: It includes the Rodriguez transcript
11 that Mr. Clareman was talking about and also a supplemental
12 declaration that's being submitted by the petitioning
13 creditors, which the alleged debtors have no objection to.
14 And Mr. Giller will explain that one.

15 THE COURT: Okay.

16 MS. BARTON: May I approach?

17 THE COURT: Yes, you may. Okay. Sure.

18 MS. BARTON: And this has the updated
19 (indiscernible) --

20 THE COURT: Okay. Thank you. All right.

21 MR. GILLER: Good morning, Your Honor. David
22 Giller, for Akin Gump, for the petitioning creditors. So
23 you'll find in your binder at JX-395 there's a supplemental
24 declaration of Mr. Castillo updating the Court on a number
25 of developments in the Mexican litigation that occurred late

1 Thursday evening.

2 THE COURT: Oh, okay.

3 MR. GILLER: So the find their way into the joint
4 stipulation. The parties do not object to its admission.
5 Mr. Castillo is here, if needed for cross-examination, but
6 no one objects to it coming in. The JX-393 is the Spanish
7 version of the order and 394 is the English version of the
8 order that was filed in the Mexican litigation.

9 THE COURT: Okay.

10 MR. GILLER: So we would have those both come in
11 and we will, of course, file it on the docket with the
12 Court's permission, if the Court so provides..

13 THE COURT: Okay. All right. That's fine. Thank
14 you. That's acceptable.

15 MR. GILLER: Thank you.

16 THE COURT: All right. Will any of that have to
17 be filed under seal? Sorry, Mr. Giller?.

18 MR. GILLER: No. It will not need to be filed
19 under seal.

20 THE COURT: None of the exhibits either?

21 MR. GILLER: None of the exhibits either.

22 THE COURT: Okay.

23 MR. GILLER: Unless someone tells me otherwise.

24 THE COURT: I was asking because some of the
25 injunction documents were filed under seal and some weren't.

1 MR. GILLER: Correct.

2 THE COURT: So I don't know how this interacts
3 with that. So that's why I'm asking the question.

4 MR. GILLER: This does not interact with the part
5 of the Mexican litigation that was filed under seal.

6 THE COURT: Okay, and that's acceptable to the
7 alleged debtors?

8 MR. CLAREMAN: Yes, Your Honor.

9 THE COURT: Okay. Just making sure. All right.
10 Thank you very much, Mr. Giller. Appreciate that.

11 MR. GILLER: Thank you.

12 THE COURT: All right. Okay. All right. If
13 there's nothing else then, Mr. Clareman, I guess it's time
14 for your side for your opening statement.

15 MR. CLAREMAN: Thank you, Your Honor. We'd like
16 to hand up a short deck that will accompany the opening.
17 For the record, Billy Clareman, from Paul, Weiss, on behalf
18 of TV Azteca and the alleged debtors.

19 THE COURT: Sure.

20 MR. CLAREMAN: May I approach, Your Honor?

21 THE COURT: Yes, you may.

22 MR. CLAREMAN: We have more copies.

23 THE COURT: No, I'm just asking if the ECRO needs
24 one. That's why. Okay. Okay. Fine.

25 MR. CLAREMAN: Your Honor, there are four grounds

1 we've argued compel dismissal of these Chapter 11 cases.
2 Those are summarized on Page 2 of the deck that we've handed
3 up. They really arise from two core deficiencies in these
4 involuntary cases. The first is going to be the subject of
5 testimony today. Because TV Azteca is a Mexican company
6 with virtually no presence in the United States and the vast
7 majority of its assets in Mexico, it cannot be restructured
8 on an involuntary basis in the U.S. in a way that is
9 enforceable in Mexico. As a result, any restructuring here
10 will necessarily be futile and wasteful. Under Mexican law,
11 there will need to be a full concurso in Mexico. For that
12 reason, dismissal under Section 305(a)(1) of the Bankruptcy
13 Code is appropriate for substantially the same reasons
14 dismissal for forum non conveniens is appropriate.

15 The second primary ground will not get as much
16 attention today during the testimony, but it is equally
17 important and it arises from the background to these Chapter
18 11 cases before they were filed in this court. Before these
19 petitions were filed, the petitioning creditors and TV
20 Azteca were litigation adversaries. They are still
21 litigation adversaries. The petitioning creditors' first
22 choice, we submit the right choice for this dispute, was a
23 litigation. That litigation was pending before Judge
24 Gardephe in the Southern District of New York, and there are
25 two significant consequences that flow from that.

1 First, because of the litigation before Judge
2 Gardephe, the petitioning creditors are ineligible to file
3 these Chapter 11 cases on an involuntary basis, and that's
4 grounds for dismissal under Section 303(b)(1) of the
5 Bankruptcy Code. The summary judgment briefing before Judge
6 Gardephe makes crystal clear that there is a bona fide
7 dispute as to the amount of their claim. That's an
8 independent grounds for dismissal without addressing any
9 other issue in this case.

10 The second consequence of the litigation history
11 is that the motion to dismiss should be denied because this
12 is not a restructuring case at all. This is a two-party
13 dispute between TV Azteca under a single indenture with the
14 petitioning creditors and it should be dismissed for cause
15 pursuant to Section 1112(b) of the Bankruptcy Code. The
16 parties have pending litigation here in the Southern
17 District of New York and in Mexico, and there are no other
18 creditors here supporting these petitions.

19 I'd like to make one more point about the
20 litigation history here before returning to the Mexican law
21 issues that will get a lot of attention today. Dismissal of
22 the petitions does not leave the creditors here without a
23 forum. They have a forum. They have a U.S. forum. That
24 U.S. forum is in Judge Gardephe's courtroom where the
25 underlying issues were being litigated before they were

1 halted by the filing of these involuntary petitions six
2 months ago. So granting the motions, the motion here, does
3 not kick anyone out of court. It returns the matter to what
4 we submit is the right court, which is Judge Gardephe's
5 courtroom several blocks away. And of course, the evidence
6 will show that the petitioning creditors can pursue an
7 involuntary concurso in Mexico. Dismissal here does not
8 preclude that. And in fact, as we've said, under any
9 circumstance there would need to be a concurso in Mexico.
10 It's inevitable. So if it's going to happen, it should be
11 at the start, not at the end of any restructuring, if
12 there's going to be a restructuring.

13 Your Honor, I'll turn next to some of the issues
14 under Mexican law. So there have been five expert
15 declarations, as Your Honor has seen and read. They
16 collectively discuss a number of provisions under Mexican
17 law. I'm not going to cover all of those provisions in my
18 opening remarks. I'm going to focus only on a few that we
19 believe are important and really drive the results here. If
20 you turn to Slide 3, the first provision I'm going to single
21 out is a unique provision in Mexico's version of the Model
22 Law and cross-border insolvency. That's Article 293. I've
23 also excerpted on Slide 3 the portion of 279 that defines
24 establishment, which is one of the terms used in 293.

25 So Article 293 is an important provision in this

1 case. Article 293 says, in sum and substance, if
2 recognition in Mexico is sought for a foreign insolvency
3 proceeding, for a debtor that has an establishment in
4 Mexico, a concurso proceeding is required. There's a
5 separate provision, Article 294, that applies when there is
6 no establishment in Mexico. If you're under that provision,
7 you don't need a full concurso. You can have an ancillary
8 proceeding. But if you have an establishment in Mexico, you
9 need to go through the concurso process and have a concurso.

10 There's a lot of disagreement between the experts
11 in this case. There's a lot of disagreement between the
12 parties in this case. But there is one thing everybody
13 agrees on, and that is that there is an establishment in
14 Mexico for the alleged debtors. They agree on that, of
15 course, because no one could dispute that TV Azteca and its
16 subsidiaries have an establishment in Mexico.

17 So the next provision I'd like to highlight for
18 the Court is Article 283. That appears on Slide 4. Article
19 283 says none of what is set forth in this title, meaning
20 Title 12, which is Mexico's analog to our Chapter 15, may be
21 interpreted in a sense that is contrary to what is set forth
22 in Titles 1, 2, 11 and 13 of this law or in any other way
23 that is contrary to fundamental principles of law that rule
24 in the Mexican Republic. So all participants in the Mexican
25 bankruptcy case, the judge, the visitor, the conciliador,

1 the liquidator, all participants shall refuse, the provision
2 says, to adopt a measure which is contrary to what is set
3 forth in such titles.

4 So not only does Article 293 require a concurso
5 for a company such as the alleged debtors', but Article 283
6 requires conformity with the concurso law. And the last
7 sentence of Article 293 says that the concurso law applies
8 to the proceeding when there's an establishment in Mexico.

9 So for that reason, the plan structure that has
10 been suggested in the opposition brief by the petitioning
11 creditors would plainly be unenforceable in Mexico. They've
12 suggested that they could terminate exclusivity, reinstate
13 Mexican creditors and then equitize some or all of their
14 debt. So I'll highlight a few ways in which this is plainly
15 not possible under Mexican law, and those are summarized on
16 Slide 5.

17 So first, the fact that there is a Chapter 11 case
18 does not actually mean that there can be a concurso because
19 you have to satisfy the insolvency test on the concurso law;
20 so another reason why a concurso should be the first, not
21 the last step. And second, a plan of reorganization that is
22 recognizable under the concurso law, it has to be in
23 agreement with the debtors. They don't have the concept of
24 terminating exclusivity and having an involuntary coercive
25 plan over the debtor's objection. Third, because TV Azteca,

1 because the alleged debtors operate concessions licenses
2 from the Mexican government, the government of Mexico has
3 special rights in connection with the bankruptcy case. One
4 of those rights is the ability to veto a plan. And one of
5 the alleged debtor entities here owns concessions, so the
6 government has the ability to veto a plan. They also have
7 specific rights to participate in specific ways in the
8 bankruptcy case. And fourth, under Mexican law, TV Azteca's
9 shareholders have interests that can't be affected by a
10 restructuring case without their consent. They have a right
11 to vote as shareholders if there's going to be anything
12 that's going to affect their equity.

13 So all of this just highlights the futility of
14 this exercise ultimately. You have a Chapter 11 case here.
15 You go through all of these steps, incur all that expense.
16 But what's the result? The result is a do over in Mexico
17 that goes through the concurso law. We submit it is not in
18 the best interest of the debtors. It's not in the best
19 interest of their creditors to have what will ultimately be
20 at most an exhibition season in a Chapter 11.

21 I next want to address briefly the dispute between
22 the experts regarding the center of main interest for TV
23 Azteca and whether there's an establishment in the United
24 States. Under the concurso law, recognition is extended to
25 two types of proceedings, foreign main proceedings and

1 foreign non-main proceedings. There's no other means for
2 recognition that is described in the concurso law. A
3 foreign main proceeding is where the debtor has its center
4 of main interest, as I know Your Honor knows, but where the
5 COMI is. These alleged debtors have their center of main
6 interest in Mexico. Substantially all of their business is
7 there. If you turn to Slide 6, we've summarized several of
8 the key points. I won't read through all of them, but
9 fundamentally, this is a company that has substantially all
10 of its operations are in Mexico.

11 THE COURT: Where is that coming from? Okay.
12 Let's just leave it alone. If it happens again, we're going
13 to have to worry about it. My apologies for Court
14 Solutions. I don't know what's going on with that. But if
15 it happens again, I guess we'll just have to hang up and get
16 my courtroom deputy to come back in. But meanwhile, please
17 proceed. Hopefully we won't have that again. They did warn
18 me we have four -- like we have to hang up every four hours
19 and redial in. But aside from that anyway, sorry, Mr.
20 Clareman, for the disruption.

21 MR. CLAREMAN: No disruption at all. So again,
22 this is the alleged debtors are fundamentally Mexican
23 companies. They have substantially all thousands of
24 employees in Mexico. Their management team is in Mexico.
25 It's where they do business. It's where they broadcast

1 television principally. They have smaller operations than
2 two other South American countries. But it's where the
3 board of directors are. It's where they're regulated. It's
4 where their shareholders, their majority shareholders are.
5 It's where they're publicly traded, or were until that was
6 ceased, but they're regulated in Mexico. This is a Mexican
7 company.

8 By contrast, there's virtually no connection to
9 the United States. Three of 35 alleged debtors are
10 organized under U.S. law. There are no employees, no
11 offices, no operations. There is at most one member of one
12 board of managers who lives in Florida, one for all of these
13 companies. These are vestigial entities. There used to be
14 operations here, but there haven't been for a long time.
15 There is no longer any material presence, substantial
16 presence in the United States. So these cases could not be
17 recognized as a foreign main proceeding. There is not a
18 COMI here.

19 We submit the claim by Mr. Guerra, the opposing
20 expert, that somehow three de minimis subsidiaries could
21 drag 35 alleged debtors under Mexican law to have their COMI
22 here, we submit that's simply not credible as opposed to the
23 other way around. So this case can't be recognized as a
24 main proceeding. The presence here does not satisfy the
25 establishment test, and therefore it can't be recognized as

1 a non-main proceeding. So again, the Chapter 11 cases are
2 not susceptible to recognition in Mexico, and you have to
3 have a do over in Mexico, even if you can get into
4 bankruptcy court in Mexico. And so the cases we submit
5 should be dismissed under 305(a)(1) of the Bankruptcy Code.

6 Before seating the podium, I will comment only
7 briefly on the two other grounds for dismissal that will get
8 less attention during the testimony today, but will feature
9 more heavily in the closing argument. As I commented at the
10 outset, the litigation history here compels dismissal under
11 Section 303(b)(1) of the Bankruptcy Code, because the
12 petitioning creditors' claims are subject to a bona fide
13 dispute.

14 Now the petitioning creditors have said that their
15 claim in the bankruptcy case is for their principal and
16 interest only, but that cannot be reconciled with the fact
17 that they directed the indenture trustee to issue an
18 acceleration notice purporting to seek payment of a
19 contested redemption premium. They later directed a trustee
20 to file litigation seeking payment of the redemption
21 premium. They litigated and filed an opposition to our
22 objection in Judge Gardephe's courtroom to the redemption
23 premium. There is no credible dispute, and that case is
24 pending. It's sub judice before Judge Gardephe, and there's
25 no credible dispute, we submit, that there is a bona fide

1 dispute as to the amount of the claim.

2 Returning finally to Section 1112(b), I'll add
3 only one final point to what's already been said. So not
4 only is this a two-party dispute with three beneficial
5 holders under a single indenture, these specific holders are
6 actually investors in the litigation that was brought in,
7 that was pending before Judge Gardephe. And I'll explain
8 what I mean by that, if you turn to Page 7 of the opening
9 deck. So the first missed interest payment on these bonds
10 was February 9, 2021. That was also the day TV Azteca
11 announced that it was going to repay a portion, about a
12 quarter of the CEBURES debt that Your Honor has heard about
13 in prior proceedings in this case. The petitioning
14 creditors were in the market buying notes starting the day
15 after if you look at the petitions that were filed in
16 connection with the involuntary petitions here, and they
17 continued to buy after acceleration, continued to buy after
18 litigation was commenced, continued to buy after the
19 briefing was being submitted before Judge Gardephe. And
20 that is summarized and reflected on Slide Number 7.

21 So the petitioning creditors have been investing
22 in the litigation. They're, not creditors who bought in the
23 initial issuance at par, were surprised by subsequent
24 events. These are parties who have been invested in the
25 litigation exercise, and that the right forum for this

1 dispute is, as I commented a few moments ago, before Judge
2 Gardephe, in Judge Gardephe's courtroom. I's not a dispute
3 for a bankruptcy court, and it's definitely not a dispute
4 for a U.S. bankruptcy court. We respectfully submit that
5 for these reasons and others that will be addressed in the
6 course of these proceedings, these petitions should be
7 dismissed. Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Clareman.

9 MR. QURESHI: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. QURESHI: For the record, Abid Qureshi, of
12 Akin Gump, on behalf of the petitioning creditors and
13 trustee. Your Honor, we too have a few slides I'd like to
14 take the Court through on opening, if I may approach.

15 THE COURT: Yes. Thank you.

16 MR. QURESHI: Your Honor, I have marked our
17 demonstrative just for identification purposes as PX-1. And
18 so with that, Your Honor, I would like to use the short
19 opening that we have a little bit differently than Mr.
20 Clareman. First, I want to just level set on the undisputed
21 facts. As Your Honor heard this morning, all the exhibits
22 are coming in by consent. In addition, we have a statement
23 of undisputed facts that the parties also submitted. I'd
24 like to preview a little bit for Your Honor what the Court
25 can expect to hear from the two live witnesses that will

1 testify. And I will conclude, Your Honor, by explaining why
2 the Mexican law issues that Your Honor is going to hear so
3 much about over the next two days are, in fact, not
4 determinative of whether this court ought to abstain from
5 exercising jurisdiction.

6 So if I could ask Your Honor to turn to the first
7 slide, which is a timeline. In fact, all of the slides are
8 timelines. The first focuses on events that took place in
9 the United States. So starting on the left side, Your
10 Honor, it is, of course, undisputed that in August of 2017,
11 TV Azteca came to the United States to access our capital
12 markets and to raise \$400 million in unsecured notes. It is
13 undisputed that those notes were marketed in the United
14 States. There were roadshows, there was an offering
15 circular and there were purchasers from the United States
16 who purchased those notes.

17 It is also undisputed, Your Honor, as can be seen
18 on the timeline, that there were not one, not two, but three
19 missed interest payments, two in 2021 and the last one
20 before acceleration in February of 2022. It will also
21 become important, Your Honor, that at no time since the
22 first missed interest payment in February of '21 has TV
23 Azteca undertaken any steps in any court to restructure its
24 obligations to the noteholders and nor are there any out-of-
25 court restructuring discussions taking place with its U.S.

1 creditors.

2 It was in August of 2022, Your Honor, that the
3 indenture trustee accelerated the notes. And later that
4 same month, the New York state collection action was
5 commenced. That action was subsequently removed by TV
6 Azteca at the federal court in September of last year and in
7 March, of course, of this year, the involuntary petitions
8 were filed. So that's what's happening here, Your Honor.

9 If we can then turn to the next slide, there were
10 a number of events going on in Mexico at the same time, many
11 of which the petitioning creditors and the indenture trustee
12 did not know about at the time. So Your Honor, there are
13 two injunctions that will be talked about over the course of
14 the testimony. One of those we refer to as the COVID
15 injunction. And so before I get to the injunction itself,
16 after the missed interest payment in February, TV Azteca
17 began purchasing and retiring local peso-denominated Mexican
18 debt referred to as the CEBURES. By September of 2022, TV
19 Azteca had purchased and retired the U.S. dollar equivalent
20 of \$221 million of that debt. And that debt, Your Honor, is
21 structurally subordinate to the notes in that although the
22 notes and the CEBURES have the same issuer, the ultimate
23 parent entity in Mexico, the unsecured notes benefit from
24 guarantees from a number of entities the CEBURES notes do
25 not.

1 So having entered the course of paying off its
2 Mexican creditors, at the same time TV Azteca began to take
3 ex parte steps in Mexico to actively prevent the U.S.
4 noteholders from seeking repayment. So in September of
5 2022, after acceleration had occurred, TV Azteca received
6 that first ex parte injunction. And among other things,
7 Your Honor, what that injunction provides for is that the
8 acceleration notice issued by the trustee is invalid until,
9 and I quote, "Such time as the World Health Organization
10 decrees the extinction of the pandemic known as COVID-19."

11 Fully five months after that injunction was
12 entered by the Mexican court, Your Honor, the indenture
13 trustee was served. Five months. At the time we were in
14 active litigation in New York court. They never told us
15 that they had received this ex parte injunction. They never
16 told the court that they received the ex parte injunction.
17 Once that injunction was finally served on the indenture
18 trustee, what did the indenture trustee do? The indenture
19 trustee filed an appeal and filed a response to that
20 complaint.

21 What happened? In May of 2023 when that was
22 filed, the Mexican court ruled that the indenture trustee's
23 response was untimely. On May 5th, the World Health
24 Organization issued a declaration. It did not say that
25 COVID-19 is extinct. It said something a little different.

1 What it said was, and again I quote, "COVID-19 no longer
2 constitutes a public health emergency of international
3 concern." Shortly after that declaration, TV Azteca went
4 back to the same judge in Mexico, again on an ex parte
5 basis, and this time they sought and received another order
6 and this one prevented TV Azteca from publicly reporting its
7 financial results in Mexico.

8 Why? According to the order, quote, "To avoid
9 causing uncertainty in the market." After the World Health
10 Organization issued its proclamation declaring the COVID
11 emergency to be over, the trustee promptly moved to vacate
12 the injunction based on that order. The noteholders and the
13 trustee also at the time of that World Health Organization,
14 Your Honor, we asked TV Azteca if they would voluntarily
15 withdraw that injunction and no steps were taken to do so.

16 Next Your Honor, the Mexican court changed its
17 mind about the timeliness of the indenture trustee's
18 response to TV Azteca's complaint. Over the course of this
19 summer, a number of the petitioning creditors were finally
20 served with that injunction. And most recently and, Your
21 Honor, this is the subject of the supplemental declaration
22 that went in by agreement, just on Thursday of last week,
23 the Mexican court finally ordered TV Azteca to respond to
24 the trustee's motion to vacate that injunction and that
25 response is due in two days on Wednesday. So Your Honor,

1 that's one injunction.

2 If I could ask Your Honor to turn to the next
3 slide, the next slide deals with the second injunction. I
4 refer to this injunction on the slide as the July 2022
5 injunction. It actually predates the COVID injunction. But
6 we didn't know. There's a theme there. So this is another
7 ex parte injunction, Your Honor, from a different judge.
8 And what this one purports to do, and again I quote,
9 "Suspension of effects and consequences that could derive
10 from the acceleration notices." So it purports to render
11 the acceleration notices ineffective.

12 And the second thing it does, Your Honor, and
13 again I quote, is the, quote, "Prohibition of the
14 codefendants from initiating and/or filing any proceeding,"
15 it uses those words, "Any proceeding for the collection
16 and/or payment of the notes." Once again, in August, TV
17 Azteca one more time went back to that same judge, again on
18 an ex parte basis. It's not like they didn't know where to
19 find us, Judge. They went back again and they had that
20 injunction extended.

21 Remarkably this second injunction, the July
22 injunction, we only saw it in connection with discovery.
23 That's where it came to light, discovery related to this
24 motion to dismiss. To date, we still haven't been served
25 with it. The trustee hasn't been served with it. The

1 district court wasn't informed of it when we were before the
2 district court and it's undisputed that that injunction
3 remains enforced today.

4 So to just level set on the record, Your Honor,
5 U.S.-issued notes defaulted, not paid. Subordinate Mexican
6 debt repaid in full. Multiple injunctions received on an ex
7 parte basis and the trustee and the noteholders actively
8 doing what they can in Mexico to try to make those
9 injunctions go away, albeit and perhaps not surprisingly,
10 unsuccessfully.

11 With that, Your Honor, I would like to turn to a
12 short preview of the expert testimony that the Court will
13 hear. Each side is offering a Mexican law expert. I don't
14 believe there will be any disputes about the qualification
15 of these experts. Professor Mejan, on behalf of TV Azteca,
16 is a respected academic with a long history in Model Law and
17 Chapter 15 matters. Mr. Guerra, on behalf of the
18 petitioning creditors and the trustee, is a respected and
19 experienced practitioner in the area of Mexican concurso
20 law. And Your Honor is going to hear widely divergent
21 opinions from these experts on a long list of issues. I'm
22 going to highlight three for Your Honor.

23 First, whether or not an involuntary Chapter 11
24 proceeding is capable under any circumstances of recognition
25 in Mexico. Professor Mejan will tell the Court it is not.

1 Mr. Guerra will say the opposite. Importantly Your Honor,
2 the experts agree that that question is an issue of first
3 impression for the Mexican courts. Second, Your Honor will
4 hear widely divergent opinions about whether or not these
5 debtors have an establishment here in the United States, as
6 that term is defined under Mexican law. Professor Mejan
7 says they do not. Mr. Guerra says that they do. This too,
8 Your Honor, in the facts of this case is an issue of first
9 impression for the Mexican courts. Third, Your Honor is
10 going to hear opinions as to whether the petitioning
11 creditors would be able, in the face of the injunctions that
12 I just reviewed for the Court, to commence an involuntary
13 concurso in Mexico. Again, Professor Mejan says not a
14 problem, yes, they can. Mr. Guerra says no, the injunctions
15 clearly would prohibit that.

16 Now as Your Honor hears testimony about all of
17 these issues, it's important to bear in mind one important
18 thing. Professor Mejan, his opinion that recognition is not
19 possible in Mexico, it is premised on the assumption that TV
20 Azteca does not cooperate, that everything that happens here
21 happens over their objection. Now whether it is true or not
22 that that is what would happen, that TV Azteca would never
23 cooperate, only the folks on this side of the courtroom know
24 the answer to that question, Your Honor. We do not. But
25 what we do know is that Professor Mejan will say if TV

1 Azteca did consent to a plan, whether one proposed by the
2 petitioning creditors or if they proposed their own plan,
3 recognition of this proceeding is possible in Mexico.

4 So his opinion that an involuntary Chapter 11 is
5 incapable of recognition flows directly from TV Azteca's
6 decision to do everything in its power to avoid its
7 obligations to U.S. creditors. We don't think that's right
8 under Mexican law either, Your Honor. And you'll hear why
9 from Mr. Guerra.

10 With respect to the opinion about the injunctions
11 and whether those injunctions do or do not prevent an
12 involuntary concurso in Mexico, think about these facts,
13 Your Honor. At the same time as TV Azteca is taking step
14 after step on an ex parte basis in the Mexican court to get
15 injunction after injunction to get it extended to prevent
16 the publication of any financial records, at the same time
17 as they are doing that, they bring an expert before Your
18 Honor to say, just kidding, those injunctions are not going
19 to stop the petitioning creditors from commencing an
20 involuntary concurso. I'm sorry, Your Honor, and I don't
21 say this lightly. They're playing games. That's just
22 ridiculous on its face. But that is their position.

23 Pivoting for a moment to another issue Your Honor
24 will hear a lot about in the cross-examination of Mr.
25 Guerra, I expect Your Honor will hear a whole lot of

1 questions about equitization of the note claims and whether
2 that is something that is permissible under Mexican law. To
3 be clear, Your Honor, there is no plan that is being
4 proposed by the petitioning creditors to equitize the note
5 claims. Yes, we said in one of our briefs that equitization
6 and/or reinstatement would be among the possibilities that
7 the petitioning creditors might consider if these cases are
8 accepted, if TV Azteca decides not to file its own plans and
9 we subsequently move to terminate exclusivity and propose
10 our own.

11 But Your Honor, absent any, and I mean any
12 financial information from these debtors, and we have none
13 because the debtors have seen to it that we have none, we
14 are clearly not in a position to propose in detail any plan
15 of reorganization. And so the time they will spend with Mr.
16 Guerra on whether equitization is or is not feasible in
17 Mexico is irrelevant.

18 So Your Honor might quite rightly be wondering, is
19 it really the case that the parties before you today are
20 asking this court to decide Mexican law issues, that in
21 Mexico are issues of first impression? Are we really
22 saying, Judge, you need to make those findings in order to
23 decide this dispute? Well, the answer for the petitioning
24 creditors is categorically, no, we are not. We do not
25 believe that whatever determination Your Honor makes on the

1 Mexican law issues should cause this court to abstain from
2 exercising jurisdiction over these cases.

3 In the case of TV Azteca, however, I think they
4 are relying entirely on Your Honor making findings of
5 Mexican law on these issues and we don't think there's a
6 basis for the Court to do that. Your Honor, whether or not
7 Mexican law allows for recognition of an involuntary Chapter
8 11 under any circumstances, again, it just does not go to
9 the abstention issues. Importantly, Your Honor, TV Azteca
10 is not contesting this court's jurisdiction over these
11 cases. Instead, they are asking the court to abstain. As
12 Your Honor knows, and as we've cited in the case law, they
13 face a heavy burden in convincing the court to abstain.

14 As Judge Marrero put it, in a decision in Globo
15 Comunicacoes, a decision Your Honor is going to hear much
16 more about at closing, he was sitting on appeal from a
17 ruling from the Bankruptcy Court, and he said that the
18 Bankruptcy Court has, and I quote, "A virtually unflagging
19 obligation to exercise the jurisdiction given it."

20 Now in Globopar, like in this case, the foreign
21 debtor was not cooperating with the involuntary Chapter 11
22 case. Judge Marrero stated as follows with respect to that
23 issue: "Globopar's cooperation would be desirable, but it is
24 not mandated. Otherwise the Bankruptcy Code would contain
25 no provision for involuntary bankruptcy petitions."

1 It cannot be the case, Your Honor, the TV Azteca
2 can use its own lack of cooperation as the basis for this
3 court to abstain from exercising jurisdiction. It just
4 doesn't make sense. But that's exactly what they are asking
5 this court to do. It can't be the case that through their
6 willful lack of cooperation, their deliberate and repeated
7 attempts to avoid their obligations to U.S. creditors that
8 they can thereby satisfy their burden of establishing that
9 abstention is inappropriate.

10 Your Honor, I'll end with one last quote from
11 Judge Marrero in Globopar. He said, quote, "One of
12 Congress's objectives in adopting the involuntary petition
13 provision of the Bankruptcy Code, 11 USC 303, was to provide
14 a means by which United States creditors could have their
15 claim to the assets of a debtor vindicated in a timely and
16 fair manner. That is precisely the purpose of these
17 involuntary petitions, nothing less."

18 Your Honor, we firmly believe that sunlight is the
19 best disinfectant and this is a case that is crying out for
20 sunlight. The U.S. creditors have every right under the
21 involuntary petitions of the Code to force these debtors
22 into a Chapter 11 proceeding. It's a situation that cries
23 out for oversight of this court. Unless the Court has any
24 questions, that's all I have.

25 THE COURT: Thank you, Mr. Qureshi.

1 MR. QURESHI: Thank you.

2 THE COURT: All right. Mr. Clareman, we'll turn
3 to the evidentiary portion. Just a question for you. Are
4 you planning on using your interpreter? I only ask because
5 if you are, I actually have to swear the interpreter in, in
6 addition to the witness.

7 MR. CLAREMAN: We are not planning.

8 THE COURT: Okay. Didn't know. It wasn't clear
9 from yesterday, the other day when we spoke.

10 MR. CLAREMAN: So Your Honor, we will call as our
11 first witness Professor Luis Manuel Meján. His direct
12 testimony is in the form of declarations, JX-29, 37 and 64.
13 And Professor Meján is here and available for cross-
14 examination.

15 THE COURT: I'm sorry. Just give me one second.
16 So 29, 37 and sorry, what?

17 MR. CLAREMAN: Sixty-four.

18 THE COURT: Sixty-four. Okay. Just want to make
19 sure. I've read them but didn't remember their numbers.
20 Okay. All right. So I assume you're going to call
21 Professor Meján to the stand and then I can swear him in
22 officially and we can proceed accordingly.

23 MR. CLAREMAN: Yes. So TV Azteca calls Professor
24 Meján to the stand.

25 THE COURT: Good morning.

1 MR. MEJAN: Good morning, Your Honor.

2 THE COURT: Good morning. Very nice to meet you.

3 All right. Professor Mejan, could you go ahead and raise
4 your right hand, please? Do you swear that all the
5 testimony you're about to give before this court will be the
6 truth, the whole truth and nothing but the truth?

7 MR. MEJAN: Yes, I do.

8 MR. CLAREMAN: Your Honor, I'll cede the podium to
9 Mr. Qureshi unless there's any preliminaries that you would
10 like to address.

11 THE COURT: Yeah. I mean, I think I presume you
12 want me to go ahead and admit the three declarations into
13 evidence.

14 MR. CLAREMAN: Yes. Well, actually, let me
15 address more broadly as a housekeeping matter --

16 THE COURT: Yes.

17 MR. CLAREMAN: -- I believe we should move by
18 stipulation all of the exhibits into evidence --

19 THE COURT: Okay. That's fine.

20 MR. CLAREMAN: -- to make things easier.

21 THE COURT: Okay. That's fine. So we will -- I
22 accept the -- obviously, the parties have moved jointly for
23 that. They're all admitted into evidence. I believe that's
24 Exhibits, oh, gosh, 1 through -- where are we -- we had some
25 extra ones -- 392 plus the additional ones today, plus the

1 binder which is --

2 MR. CLAREMAN: Yeah. Oh, no, they're not.

3 They're on the docket. They are --

4 THE COURT: -- 395.

5 MR. CLAREMAN: ECF 61.

6 THE COURT: Okay. All right. So before we go, I
7 just have one other question, which is a good question.
8 Obviously we've read the unredacted versions of these
9 declarations. There are some provisions of different
10 parties declarations being under seal. Obviously there were
11 some elements here relating to the Mexican litigation,
12 interest or otherwise, that where some things were redacted.

13 So my question is, do we have any issues with
14 that, with the testimony? Are you going to let us know when
15 you're going to get to something that's confidential?

16 MR. QURESHI: Yes.

17 THE COURT: That's true for you, Mr. Qureshi, on
18 your cross-examination?

19 MR. QURESHI: Yes.

20 THE COURT: And then we can go ahead and mark the
21 record as confidential because we're going to need to do
22 that for purposes of our record. And then when we're
23 finished and we're going off, we're going to have to do
24 that. That also goes to people in the courtroom. Is there
25 anybody in the courtroom that's actually not a party to the

1 protective order? That's a question I have. I don't know.

2 MR. QURESHI: So Your Honor, sorry, if I may,
3 again, for the record, Abid Qureshi. I think I will manage
4 and I will tread very carefully to get through the cross-
5 examination without having to refer to anything that is
6 redacted.

7 THE COURT: Okay. That's fine.

8 MR. QURESHI: Should that change based upon how
9 the cross-examination unfolds, we will hit the pause button
10 and figure out how to address it.

11 THE COURT: Okay, and I have to ask one other
12 question related to that. I actually am not sure who's on
13 the phone. I guess I can look at my list and see if I
14 actually have a list. So I don't know if there's any issues
15 with that. Obviously if you don't go into confidential
16 information, it's not a problem. If we do need to, I have,
17 as I think mentioned before, had to actually, I guess,
18 disconnect.

19 It looks to me like everybody we have listed here
20 though, however, from TV Azteca, it looks like they're, I'm
21 guessing, related to TV Azteca or related to Diamond, who I
22 presume is also a party to the protective order. I believe
23 we actually have one person on from Debtwire, so actually
24 two, it looks like, that I can see, and one from Reorg
25 Research, it looks like actually too. So if we do get into

1 anything, we will have to stop so that we can actually
2 disconnect our phone. And I'm sorry for your clients for
3 that reason, who are on listen-only because that's really
4 going to be difficult otherwise. And then we can reconnect
5 when we pass out of the confidential section of the
6 testimony. So I just wanted to make sure that that was
7 clear for the record. Again, I understand you all hope you
8 won't get there, and that's fine. But if you are, we're
9 going to need to do that just because obviously you have a
10 protective order for a reason in this case.

11 MR. QURESHI: Yes.

12 THE COURT: Okay. Thank you.

13 MR. CLAREMAN: Yeah, and just to address it, I
14 believe that the redactions that are in the expert
15 declarations pertain to one of the Mexican litigations.

16 THE COURT: Yes.

17 MR. CLAREMAN: And we've agreed that those matters
18 can be addressed in open court. The petitioning creditors
19 remain subject to the protective order, which affects their
20 ability to use those documents in Mexico. But we have
21 agreed that they can be addressed in open court without
22 regard to the redactions or confidentiality designations
23 that might otherwise require --

24 THE COURT: Okay, and you don't have a problem
25 with that if we end up doing that with the press? That's

1 why I'm asking.

2 MR. CLAREMAN: Yes. Yes.

3 THE COURT: Okay. As you know, we have open
4 courts here in the United States.

5 MR. CLAREMAN: Yes. Yes.

6 THE COURT: Okay. Let's see. No, I'm just
7 leaving this here. Okay. All right. So I think we've now
8 gone ahead and admitted the declarations and all the
9 evidence into -- and all the various exhibits into evidence.
10 So I think parties can proceed. Was there something else
11 you wanted to raise before Mr. Qureshi cross-examines the
12 witness?

13 MR. CLAREMAN: Yes, just one other housekeeping
14 matter. The parties have filed at ECF 61 a joint
15 stipulation of undisputed facts.

16 THE COURT: Yes.

17 MR. CLAREMAN: And that should also be considered
18 part of the record, the evidentiary record for this
19 proceeding.

20 THE COURT: Yes, that's fine. And of course, the
21 Court will accept that into evidence. I can't recall the
22 top of my head if that had also any redactions, but
23 obviously, if you're going to refer to it -- I don't think
24 it did.

25 MR. CLAREMAN: It did.

1 THE COURT: It did? If it's going to refer to
2 anything, I'm just warning people this might be a problem
3 more for argument than for when we're cross-examining
4 witnesses, but just noting same problem. If you're going to
5 refer to something specifically that's actually subject of
6 the redaction, then we will need to clear off the parties
7 that are not able to participate.

8 MR. CLAREMAN: Yes.

9 THE COURT: Obviously that doesn't appear to be
10 anyone in court, but it does appear to be on the telephone.

11 MR. CLAREMAN: Yes, and I believe that the
12 redactions there are related to the Mexican litigation issue
13 that I addressed before --

14 THE COURT: Right.

15 MR. CLAREMAN: -- so for purposes of needing to
16 clear the courtroom, that will not be an issue.

17 THE COURT: Okay. All right. That's fine.
18 Again, it's not limited obviously here in our courts to the
19 party. So I want to make sure that there's not an issue
20 because, albeit as I understand, I believe the trading of
21 the stock has been suspended, that doesn't mean, of course,
22 that there aren't parties that have an interest in it in the
23 markets, whether the markets in Mexico, for example, as well
24 as the bond markets here in the United States. So there are
25 reasons for concern.

1 MR. CLAREMAN: Understood.

2 THE COURT: All right.

3 MR. CLAREMAN: Thank you, Your Honor.

4 THE COURT: All right. Mr. Qureshi?

5 MR. QURESHI: Thank you, Your Honor. We have
6 prepared some witness binders just to make it a little
7 easier to direct the witness to documents. They just
8 consist of a subset of exhibits that I plan to use.

9 THE COURT: Okay, and the other side has seen
10 them?

11 MR. QURESHI: They're going to get a copy.

12 THE COURT: Okay.

13 MR. QURESHI: It's just the subset of the --

14 THE COURT: That's fine.

15 MR. MEJAN: Thank you.

16 THE COURT: Thank you.

17 CROSS-EXAMINATION OF LUIS MANUEL C. MEJAN

18 BY MR. QURESHI:

19 Q Professor Mejan, good morning.

20 A Good morning, Mr. Qureshi.

21 Q Nice to see you again. Sir, we handed you a binder,
22 and that binder contains a number of exhibits that I plan to
23 refer to today. If we can start with turning to the reply
24 declaration that you've submitted in this case, that is JX-
25 037.

1 A 037, yes.

2 Q And in particular, sir, I would like to direct you to
3 Page 18, and specifically to Paragraph 34 on Page 18. Is
4 that binder already falling apart?

5 A Kind of. Thirty-four. Yes. Okay.

6 Q Do you have Paragraph 34 before you, sir?

7 A Yes.

8 Q Okay, and I would like to direct your attention to the
9 second half of that paragraph. And you write in that
10 paragraph, a Mexican bankruptcy court cannot recognize a
11 foreign main proceeding in the absence of a foreign main --
12 I'm sorry, I misread it. Let me try that again. A Mexican
13 bankruptcy court cannot recognize a foreign non-main
14 proceeding in the absence of a foreign main proceeding
15 because, by its very nature, the former is intended to be
16 ancillary to the latter. That is your expert opinion,
17 correct?

18 A Yes.

19 Q Okay, and so what you are saying is, under the LCM --
20 first of all, the LCM is how we refer to the concurso law,
21 correct?

22 A Correct.

23 Q So you will understand what I mean when I say LCM?

24 A Yes.

25 Q And your opinion is that under the LCM, it is

1 impossible for a foreign non-main proceeding to be
2 recognized unless there is also a foreign main proceeding
3 somewhere, correct?

4 A That's my understanding.

5 Q And am I also correct, sir, that the LCM itself does
6 not expressly contain that requirement anywhere?

7 A No.

8 Q Okay. Instead, you arrive at that conclusion by
9 extracting from other provisions of the LCM, correct?

10 A Yes.

11 Q Okay, and you agree with me, sir, do you not, that the
12 Model Law -- I'm sorry, let me step back. You're familiar
13 with the Model Law, correct?

14 A Yes, I'm familiar.

15 Q And the Model Law, just for the record, it's at JX-048.
16 It's also in the binder in front of you. And you agree with
17 me, Professor, do you not, that the Model Law does not
18 anywhere contain a requirement that a foreign non-main
19 proceeding can only be recognized if there is also a foreign
20 main proceeding? It doesn't say that, does it?

21 A Yes, that's correct.

22 Q Okay, and you're also aware, I take it, Professor, that
23 the Model Law comes along with what is referred to as a
24 "Guide to Enactment"?

25 A Yes.

1 Q It's in the same exhibit that I just referred to, JX-
2 048. And do you agree with me, sir, that the "Guide to
3 Enactment" that accompanies the Model Law also does not
4 suggest that a foreign main proceeding can only be
5 recognized -- I did it again. Let me clean that up. Do you
6 agree with me, sir, that the "Guide to Enactment" that
7 accompanies the Model Law does not suggest that a foreign
8 non-main proceeding can only be recognized if there is also
9 a foreign main proceeding?

10 A With that precise express words, I agree with you.

11 Q Okay. In fact, the "Guide to Enactment" says the
12 opposite, doesn't it?

13 A No. It doesn't say so.

14 Q Okay. So turn, please, to the "Guide to Enactment,"
15 again, it's JX-48 in your binder. And I'd like to turn to
16 Page 112 and in particular to Paragraph 234. Sir, do you
17 see Paragraph 234 here?

18 A Yes.

19 Q So let's focus on Page 112 for a minute. Let's look
20 first. You can see in the box on that page is reproduced
21 Article 30 of the Model Law, correct?

22 A Yes.

23 Q Let me step back. You understand that the LCM, the
24 Mexican concurso law, it implements into Mexican law the
25 Model Law in the same way that Chapter 15 here in the United

1 States implements the Model Law into U.S. law. That's your
2 understanding?

3 A There are some differences.

4 Q Of course, but generally the purpose --

5 A Generally, yes.

6 Q Okay. So looking at Article 30, and in particular to
7 Subparagraph B of Article 30 --

8 A B?

9 Q B as in boy. It says, if a foreign main proceeding is
10 recognized after recognition or after the filing of an
11 application for recognition of a foreign non-main
12 proceeding, any relief in effect under Article 19 or 21
13 shall be reviewed by the foreign court. You're familiar
14 with that position, correct?

15 A Yes.

16 Q Okay. Now let's look at Paragraph 234. You understand
17 that Paragraph 234 is commentary on the Model Law, correct?

18 A Yes.

19 Q Okay, and go over, please, to Page 113.

20 A Yeah.

21 Q And in the middle of that paragraph, there is the
22 following sentence: under Article 29, which, as a matter --
23 I'm sorry. I'm having trouble reading today. Are you
24 there? It begins, unlike Article 29, it's about four lines
25 down on the top of Page 113.

1 A Okay. I have it.

2 Q You found it. Okay, and what it says is, quote,
3 "Unlike Article 29 (which as a matter of principle gives
4 primacy to the local proceeding) Article 30 gives preference
5 to the foreign main proceeding, if there is one." See those
6 words?

7 A Yes.

8 Q So do you agree with me that the Model Law expressly
9 contemplates that there could be a non-main proceeding in
10 the absence of a main proceeding?

11 A No. May I elaborate?

12 Q No, that's fine.

13 A Okay.

14 Q If you disagree, you can disagree. That's quite all
15 right. Do you know whether Chapter 15 in the United States
16 has been interpreted to require that a foreign non-main
17 proceeding can only be recognized if there's also a foreign
18 main proceeding?

19 A I'm not an expert on U.S. law, so I cannot make an
20 opinion about this --

21 Q Okay. So you don't know one way or the other, do you?

22 A Yes. No, I don't know.

23 Q Okay. Well, would you be surprised to learn that
24 that's not the law in the United States?

25 A Say that again, please.

1 Q You know what? I'll do it a different way. I'm going
2 to hand up another document. I will mark for identification
3 PX-2, which is a case that's not being offered into
4 evidence.

5 MR. QURESHI: Your Honor, may I approach?

6 THE COURT: Yes.

7 THE WITNESS: Thank you.

8 THE COURT: Is this a Mexican law case?

9 MR. QURESHI: No. It's a U.S. case.

10 MR. CLAREMAN: Your Honor, I --

11 THE COURT: Okay. I can see why you're going to
12 be raised -- why Mr. Clareman's jumping up here.

13 MR. CLAREMAN: Yeah. Your Honor, if I may object
14 to the use of this case, it's certainly beyond the scope of
15 the direct set forth in the declarations of Professor Mejan.
16 He's not proffered as an expert on U.S. law, and therefore I
17 object to both the exhibit and the line of questioning about
18 this case.

19 THE COURT: Okay. Mr. Qureshi?

20 MR. QURESHI: Sure. Your Honor, the Model Law,
21 which the LCM purports to implement into Mexican law, has
22 provisions in the Model Law that talk about how the Model
23 Law is to be interpreted. And those provisions expressly
24 reference how the Model Law is interpreted in other
25 countries. There is reference in the Model Law and in the

1 "Guide to Enactment" to a database provided by UNCITRAL,
2 created by UNCITRAL, the purpose of which is to have
3 opinions from other countries interpreting the Model Law
4 available.

5 THE COURT: I think then, you have to do some
6 foundational questions.

7 MR. QURESHI: Sure.

8 THE COURT: If this is where you're going. I
9 think you have to ask the witness if he's familiar with it,
10 if he reviews it regularly, what experience he has with it,
11 and then we're going to get to this case if he's ever seen
12 it before because if the answer is no, there's nothing to
13 ask him about.

14 MR. QURESHI: Okay. Fair enough. Well, then, in
15 that case, Your Honor, I will not use the case because I'm
16 sure he has not seen it.

17 THE COURT: Oh, who knows?

18 MR. QURESHI: Yeah.

19 THE COURT: But this is not an unknown case in our
20 district. But that doesn't mean that he's seen it.

21 MR. QURESHI: Right.

22 BY MR. QURESHI:

23 Q Well, Professor Mejan, let me ask you this. Are you --
24 and this is in your CV. You are a member of a number of
25 professional organizations, correct?

1 A That's correct.

2 Q One of them is the International Insolvency Institute,
3 correct?

4 A Yes.

5 Q And that institute has as members a number of academics
6 like yourself, correct?

7 A Yes.

8 Q Okay, and do you generally follow academic literature
9 on the Model Law?

10 A Yes.

11 Q Okay, and are you familiar with any articles that
12 address this question of whether the Model Law requires the
13 existence of a foreign main proceeding in order for there to
14 be a foreign non-main proceeding?

15 A An academic article, you say?

16 Q Yes.

17 A No, I'm not aware if there is one.

18 Q You don't know whether there are, so you're not
19 familiar with one.

20 A Yes.

21 Q Okay. All right. Sir, let's turn to a few provisions
22 of the LCM.

23 MR. QURESHI: And Your Honor, so for the record,
24 with respect to the LCM, in his witness binder at JX-43 is
25 an agreed upon translation, and that translation is one

1 provided publicly by the Mexican government. I believe it's
2 by the Central Bank. For convenience, I have also included
3 in the witness binder for the witness, as we did in the
4 deposition, a Spanish version.

5 THE COURT: Okay.

6 MR. QURESHI: Just to the extent he's more
7 comfortable looking at both versions. But obviously my
8 questions will focus on the English version, and that's at
9 JX-43.

10 BY MR. QURESHI:

11 Q Professor, let's start by referring to Article 296,
12 which appears at Page 72. Just let me know when you have
13 that page in front of you, sir.

14 A I have it. Yes.

15 Q Professor, just again, for your convenience, the prior
16 document in your binder, 42, that has the Spanish version,
17 if you ever never to refer to that.

18 A Okay. I have here the English version.

19 Q Okay, and just to get some terminology out of the way,
20 you agree, right, that where in this translation it uses the
21 words principal foreign procedure, that's the same thing as
22 what we've been calling foreign main proceedings?

23 A Foreign main. Yes.

24 Q And non-principal foreign procedure is the same thing
25 as foreign non-main proceeding, correct?

1 A Correct.

2 Q And where the statute uses the word merchant, you
3 understand that to be the same as debtor?

4 A Yes.

5 Q Okay, and finally, in this provision, where there is
6 reference to the center of principal interests, you
7 understand that to be the same thing as the center of main
8 interests or COMI, correct?

9 A COMI. Yes.

10 Q Okay. So now let's turn for a moment to Article 283,
11 and that is on Page 70 of this exhibit.

12 A Yes.

13 Q And you understand, right, that Article 283 provides
14 that nothing in the LCM may be interpreted in a way that is
15 contrary to, among other things, fundamental principles of
16 law that rule --

17 A Not in -- not in this title.

18 Q I'm sorry?

19 A The text is none of what is set forth in this title.

20 Q Right.

21 A Not in the LCM in general.

22 Q Okay. I'm sorry, you are correct.

23 A Okay.

24 Q In this title shall be interpreted in a way that is
25 contrary to, among other things, fundamental principles of

1 law that rule in the Mexican Republic, correct?

2 A Yes. Yes.

3 Q Okay. Now let's go back to Article 296. And I
4 apologize, sir, there will be a lot of back and forth as we
5 flip through provisions. Let's focus on the first line of
6 296, and what it says is, except for what is set forth in
7 Article 281 of this law, a recognition shall be granted to a
8 foreign procedure when, and then there are four subsections.
9 Do you see that?

10 A Yes.

11 Q Okay, and I want to focus on the word shall. Do you
12 agree with me that shall is mandatory language? Meaning, if
13 the requirements that are set forth below are satisfied,
14 subject to Article 283 being consistent with fundamental
15 principles of Mexican law, then recognition shall be granted
16 by the court, correct?

17 A Yes.

18 Q Okay.

19 A Subject to 283.

20 Q Correct. Okay. So now I'd like to go through the four
21 requirements that are listed in Article 296 for recognition.
22 And the first one simply requires that there be a foreign
23 procedure; that is, a legal procedure in the sense of
24 Subsection 1 of Article 279 above. Happy to refer to that
25 subsection, but, Professor, you agree with me, don't you,

1 that a Chapter 11 proceeding can be a foreign procedure, as
2 that term is used in Article 296, Subsection 1?

3 A Yes.

4 Q Now let's go to the second requirement of Article 296,
5 and that one is the requirement that the foreign
6 representative that requests the recognition is a person or
7 an organization in the sense of Subsection 4 of the cited
8 Article 279. Now again, you agree with me, do you not, sir,
9 that a foreign representative of this Chapter 11 proceeding
10 could meet the requirements of being a foreign
11 representative, as required here?

12 A Yes.

13 Q Okay. Now let's go to the third provision in Article
14 296. And the third provision, Professor, that in turn
15 requires compliance with three other provisions of the LCM,
16 292, 293 and 294, correct?

17 A Yes.

18 Q Okay. So let's refer to those. Let's start with 292.
19 So if you can go back to Page 71. Are you with me,
20 Professor?

21 A Yes.

22 Q Okay, and what Article 292 does is it sets forth the
23 various documents that need to accompany a request for
24 recognition by the foreign representative, correct?

25 A Yes.

1 Q And I take it, Professor, you're not aware of any
2 reason why a foreign representative in this case could not
3 meet the requirements of Article 292?

4 A Well, I don't know whether he can get the certified
5 copies or the certificate issued by the court. That resides
6 on the court to decide, not on the foreign representative.

7 Q Okay. So if the foreign representative is able to get
8 from the U.S. court certified copies of the things
9 identified in Article 292, you agree with me that the
10 foreign representative of this proceeding could comply with
11 Article 292?

12 A Yes.

13 Q Okay. Now let's go back again to 296. This is
14 Subsection 3, and it refers next to Article 293, correct?

15 A Yes.

16 Q Okay. So let's go to 293. Article 293 appears on the
17 very bottom of Page 71.

18 A Yes.

19 Q And what Article 293 provides in part is when the
20 recognition of a foreign procedure is requested in respect
21 of a merchant that has an establishment in Mexico, the
22 provisions of Chapter 4 of Title 1 of this law must be
23 observed, including those relative to the imposition of
24 injunctive reliefs and precautionary measures, correct?

25 A Yes.

1 Q Okay, and you agree with me, correct, that the TV
2 Azteca entities that are debtors in this proceeding, they
3 all have an establishment in Mexico, as that term is used in
4 Article 279, correct?

5 A Yes. I would say it has more than establishment. A
6 COMI.

7 Q In light of the fact that the debtors here have at
8 least an establishment and, in your view, a COMI, do you
9 agree with me that this Chapter 11 proceeding would comply
10 with Article 293?

11 A Yes.

12 Q Okay. Now let's turn back to 296 one more time and the
13 last subsection that is referenced in 296, Subsection 3, is
14 Article 294, correct?

15 A Yes.

16 Q Okay. So let's go to 294. It's directly above on the
17 same page. And you agree with me, do you not, that Article
18 294 is only applicable in the case of a foreign debtor that
19 does not have an establishment in Mexico, correct?

20 A Yes.

21 Q And so Article 294 is not applicable to this foreign
22 proceedings, correct?

23 A Yes.

24 Q And therefore, sir, you agree with me that these
25 Chapter 11 cases are capable of meeting all of the first

1 four enumerated subsections of Article 296, correct?

2 A Yes.

3 Q Okay. Now let's go on to the next part of 296. What
4 it says next is, right, if the prior subsections are
5 satisfied, the foreign procedure shall be recognized. And
6 again, it uses the word shall, correct?

7 A Yes.

8 Q And you agree with me that shall is a mandatory word?

9 A Mandatory is the consequence, yes.

10 Q Okay, and it then has two possibilities. As a foreign
11 main proceeding or, and it uses the word or, a foreign non-
12 main proceeding, correct?

13 A Yes.

14 Q And so you understand that by use of the word or in
15 this section of the statute, if the requirements for
16 recognition above are met, the foreign proceeding must be
17 recognized as either one or the other. A foreign main or a
18 foreign non, right?

19 A One or the other. Yes.

20 Q And Professor Mejan --

21 A Or none of them.

22 Q I'm sorry?

23 A Okay. No. Go ahead. I'm sorry.

24 Q No, no. Please.

25 A No, because there is a third possibility, avoiding the

1 chapter of this second paragraph. It's a case where the
2 foreign procedure shall not be recognized. It doesn't meet
3 neither of those two possibilities.

4 Q Okay. So you're referencing the Shakur case?

5 A No. No. I'm not referencing --

6 Q I'm sorry. I didn't hear you.

7 A No, I'm not referencing that case. What I'm saying is
8 that the court asked to recognize the foreign proceeding,
9 finds that the debtor doesn't have a center of main interest
10 in the foreign country, and nor it has an establishment in
11 the foreign country, then the foreign proceeding won't be
12 recognized.

13 Q So Professor, despite our agreement that this Chapter
14 11 proceeding is capable of satisfying all of the
15 requirements that we just reviewed of Article 296, and
16 despite your agreement that Article 296 uses mandatory
17 language, it says shall be recognized --

18 A Yes.

19 Q -- your expert opinion is that this Chapter 11
20 proceeding cannot be recognized at all in Mexico, whether as
21 a foreign main or a foreign non-main proceeding, correct?

22 A Correct.

23 Q Okay. All right. Sir, before we move on to another
24 section, do you have some water up there? Do you need some?

25 A No. I'm good.

1 Q You're good. Okay. So let's go to another provision
2 of the LCM, which is Article 279, and that is on page -- I'm
3 sorry. Article 279, which is the definition of
4 establishment. And that definition, sir, appears on Page
5 70. So 279 starts on Page 69, and it's subsection Roman
6 Numeral (vi), which is on Page 70. And that is where the
7 definition of establishment appears. Do you see that?

8 A Yes.

9 Q Okay, and your expert opinion is that this Chapter 11
10 proceeding cannot meet the requirements of a foreign non-
11 main proceeding because the alleged debtors do not have an
12 establishment, as that term is defined in this article,
13 correct?

14 A Correct.

15 Q Okay, and let's turn for a minute to your opening
16 expert report, if you could. It is JX-29. It's in your
17 binder.

18 A Thirty-nine?

19 Q Twenty-nine.

20 A Twenty-nine.

21 Q JX-29. Do you have it?

22 A Yes.

23 Q Okay.

24 A Which --

25 Q Fifty-five. And that appears on Page 22. You have

1 that?

2 A Yes.

3 Q Okay. So in that paragraph, you give the opinion that
4 the Mexican court would not recognize the involuntary case
5 as a non-main for several reasons, and I want to refer to
6 the first one. You write, first, based on the Rodriguez
7 declaration, I do not believe the alleged debtors maintain
8 an establishment in the United States, or at a minimum, it
9 would be contested that any establishment exists in the
10 United States because there are no offices or employees
11 there. That's your opinion, right?

12 A Yes.

13 Q And you rely for that opinion solely on the Rodriguez
14 declaration?

15 A Yes.

16 Q Okay, and you added a parenthetical in what I just
17 wrote, what I just read, and in the parenthetical, you
18 write, or at a minimum, it would be contested that any
19 establishment exists in the United States, right? You put
20 that in parentheses, correct?

21 A Yes.

22 Q Okay, and the reason you added that parenthetical to
23 your opinion is that you recognize that there is a
24 possibility that the Mexican Court could disagree with you,
25 correct?

1 A Yes.

2 Q Okay. Now as stated in this paragraph, the reason you
3 give for the lack of an establishment is the lack of offices
4 or employees in the United States, correct?

5 A Yes.

6 Q And when you use the word offices in this paragraph of
7 your opinion, you mean a physical location, correct?

8 A Yes. Correct.

9 Q And when you use the word employees in Paragraph 55,
10 you mean direct employees of TV Azteca, correct?

11 A Yes, that's the meaning of employees.

12 Q Okay. So let's go back --

13 A It's more than that, but okay.

14 Q Please.

15 A Yes. Yes. No. This is part of the definition of
16 establishment.

17 Q Very well. So let's go back to that.

18 A Okay. So --

19 Q I'm sorry. I didn't mean to cut you off. Keep going.

20 A Okay. So the definition of establishment is a large
21 one. You already pointed in the LCM, and when it uses terms
22 like offices or employees, it refers to human means or goods
23 in general.

24 Q So Professor, why don't we look at that definition
25 together, okay?

1 A Okay.

2 Q Let's go back to the definition of establishment in
3 Article 279. Again, apologies for all the flipping back and
4 forth. It's on Page 70, and it's JX-43, in case you're
5 having trouble finding it.

6 A 279. Okay. I have it.

7 Q You have it?

8 A Yes, I have it in the Spanish version, but it doesn't
9 matter.

10 Q Okay, and you're looking at Subsection 6, which
11 contains the definition of establishment?

12 A Yes.

13 Q Okay, and what it says is, and I quote, "Establishment
14 shall be understood as any place of operations where the
15 merchant exercises an economic activity with human and
16 material resources or services in a non-transitory manner."
17 Sir, the word employees does not appear in that definition,
18 correct?

19 A No, I understood that human means includes employees.

20 Q Right. You interpret the word human, the words human
21 resources to mean employees, correct?

22 A Among others.

23 Q Among others. Okay. So now I'd like you to turn to
24 your supplemental declaration, your reply declaration. It's
25 also in your binder. It is JX-37.

1 A Okay.

2 Q In particular Page 15.

3 A Page 15.

4 Q On Page 15, you will find Paragraph 29.

5 A Okay.

6 Q Do you have Paragraph 29 in front of you?

7 A Yes.

8 Q Okay. So I would like to direct your attention to the
9 last line on Page 15, and it carries over to the next page.
10 And you will see there that you are quoting the "Guide to
11 Enactment," correct? The last line on Page 15.

12 A The last line on that page.

13 Q Right, it says as the "Guide to Enactment" explains.
14 And then there begins a quote. Are you with me?

15 A Yes.

16 Q Right. And what you put in the quote is, again,
17 quoting from the "Guide to Enactment", "The emphasis on an
18 economic activity having to be carried out using human
19 resources," and then you put in brackets, "[i.e. employees]
20 shows the need for a minimum level of organization required
21 for an establishment," correct?

22 A Yes.

23 Q And you cite Paragraph 89 of the "Guide for Enactment"
24 as the source of this quote, correct?

25 A Yes.

1 Q So let's look at the "Guide to Enactment". It can be
2 found at JX-48, and that particular quote is at Page 55.
3 And in particular, it's Paragraph 89 on Page 55 of the
4 "Guide to Enactment". Professor, just let me know once you
5 have that in front of you.

6 A Fifty-five. Paragraph 55 of the enactment --

7 Q I'm sorry. Page 55 of the "Guide to Enactment". And
8 on Page 55 -- I'm sorry, sir, it's a little unclear because
9 there are two page numbers. I'm referring to the bottom of
10 the page that says 55 of 122. Those are the page numbers
11 I'm referring to.

12 A Yes. Yes. Fifty-five.

13 Q And on Page 55, I hope you will see Paragraph 89.

14 A Yes.

15 Q Great. And in Paragraph 89, in the "Guide to
16 Enactment", you see the second subsection there that begins
17 the emphasis.

18 A Yes.

19 Q That's what you quoted from, right? The emphasis on an
20 economic activity having to be carried out using human
21 resources shows the need for a minimum level of
22 organization. That's what you quoted in your report,
23 correct?

24 A Yes.

25 Q Only you added in square brackets, employees. And the

1 reason you put it in brackets is the "Guide to Enactment"
2 doesn't say employees, does it?

3 A Sorry, I'm not following you.

4 Q Sure. In your expert report, you added to this
5 quotation in square brackets i.e. employees. And the
6 reason, Professor, that you put the word employees in
7 brackets is the "Guide to Enactment" does not refer to
8 employees expressly anywhere when it is discussing
9 establishment, correct?

10 A No. The footnote in the declaration refers to the
11 general meaning of what I'm saying. It does not refer to
12 the word employees. The footnote is put at the end of the
13 paragraph. So the footnote refers to the whole content of
14 Paragraph 29, and not only to the word employees in
15 brackets.

16 Q So, Professor, my point is a different one. You agree
17 with me, do you not, that Paragraph 89 in the "Guide to
18 Enactment" does not expressly use the word employees?

19 A No. Yes, I agree with you that the word employees does
20 not appear on 89.

21 Q Okay, and your opinion is that, for example,
22 consultants that might be working on behalf of one of the
23 debtors in the United States would not be considered, quote,
24 "human resources," as that term is used in Article 279 of
25 the LCM, right?

1 A No, I think the term human resources, human means, as I
2 understand the Model Law uses, includes those advisors for
3 people that are not employees, but can be used by a company.

4 MR. QURESHI: Can we get his deposition, please?
5 Your Honor, may I approach?

6 THE COURT: Yes.

7 MR. QURESHI: Apologies, Your Honor. I just
8 couldn't find my copy of the deposition.

9 THE COURT: No. That's okay. I think we could
10 give you one.

11 CLERK: Yeah, we could give you one.

12 MR. QURESHI: Oh, I'm sure we have it. I have a
13 marked up copy, which --

14 THE COURT: Okay. That's fine. But if not, we'll
15 happily hand over one back. You need it to cross-examine
16 the witness.

17 MR. QURESHI: Your Honor, apologies for the delay.

18 THE COURT: No problem. That's fine.

19 MR. QURESHI: It'll be just a couple of minutes.
20 Apparently I left it in the other room.

21 THE COURT: Okay. That's all right.

22 MR. QURESHI: Thank you.

23 THE COURT: No problems.

24 MR. QURESHI: Thank you, Your Honor. Apologies
25 for the delay.

1 BY MR. QURESHI:

2 Q Professor Mejan, you recall that on Monday, I think it
3 was of last week, I took your deposition, right?

4 A Tuesday.

5 Q Was it Tuesday?

6 A Yes.

7 Q You recall being deposed? Yes?

8 A Yes.

9 Q Okay, and you understood that you were under oath
10 during your deposition?

11 A Yes.

12 Q Okay. Professor, please turn to Page 97 of your
13 deposition transcript, and the page numbers are on the top
14 of the page. Do you recall, sir, that I asked you the
15 following question and you gave the following answer, and
16 this appears at Line 13 through 24 of Page 97:

17 "Question: Okay, and for purposes of determining under
18 the LCM whether there is an establishment in the United
19 States, are the presence of consultants or people working on
20 behalf of the company who are not direct employees relevant?

21 Answer: For the purpose of creating an establishment,
22 no. This kind of people or persons providing services don't
23 qualify as employees."

24 That was your testimony, correct?

25 A Yes.

1 MR. CLAREMAN: Objection, Your Honor.

2 Completeness. The discussion and question and answering
3 concerning that was just read continues on Page 98, and I
4 would ask that the witness also be read Page 98, Line 6
5 through Line 15, as well as Page 100, Line 10.

6 THE COURT: I think I'm going to let you do that
7 on redirect.

8 MR. CLAREMAN: All right. Thank you, Your Honor.

9 THE COURT: Just make a note to yourself.

10 BY MR. QURESHI:

11 Q Now Professor, you can put the deposition transcript to
12 the side for the moment. The basis, as I understand it,
13 sir, for your opinion that the word human resources, as used
14 in the LCM, means employees is because the definition of
15 establishment uses the phrase non-transitory to describe the
16 type of activity taking place, correct?

17 A Not exactly. I think -- can I give my explanation?

18 Q Sure, go ahead.

19 A Thank you. The definition that is explained in the
20 "Guide of Enactment," the paragraph we already saw in the
21 following paragraphs, establish a combination of elements
22 that can be taken into account for the court that has to
23 decide whether or not they are an establishment. The
24 elements that the definition provides are a place, an
25 economic activity, a non-transitory way and the use of human

1 means or goods. So what in the deposition and here is what
2 I'm trying to explain is that the definition has to be taken
3 in a complete way. And as this is a factual nature, the
4 facts can be brought to the court who has the task to define
5 whether or not there is an establishment. That's why in my
6 declaration I say, at minimum, or at least that is what the
7 court is have to decide. And if I'm referring to offices or
8 employees or human resources or any other element, those
9 have to be combined before the court to arrive to that
10 decision. That's my understanding of the definition of
11 establishment.

12 Q And you understand that the definition of establishment
13 uses the phrase non-transitory, correct?

14 A Yes.

15 Q Okay, and that is to describe the nature of the
16 activity taking place. And your opinion is that if you are
17 doing something that is transitory, you can hire
18 consultants, professionals to do that work, and you're not
19 constrained to call them employees, right?

20 A Yes.

21 Q Okay, and in your analysis, there isn't any specific
22 time period around transitory. It depends on all of the
23 facts, right?

24 A Yes.

25 Q Okay.

1 A And that was the purpose of the Model Law.

2 Q Right, and so transitory could be a month, it could be
3 a year, it could be two years. It just depends.

4 A Yes.

5 Q Okay, and when you concluded in Paragraph 55 of your
6 report that TV Azteca has no employees and no offices, you
7 relied on Mr. Rodriguez for that, correct?

8 A Correct.

9 Q Okay, and, in fact, you rely solely on Mr. Rodriguez's
10 declarations for the conclusion that there is no
11 establishment in the United States, correct?

12 A Yes.

13 Q Okay. Now we can look again, if you like, sir, at
14 Article 279, but it does not use the term office, correct?

15 A In Article 279?

16 Q 279. The definition of an establishment.

17 A Let me go one second.

18 Q Sure.

19 A Remember the top --

20 Q It's Page 70 of 89, if you look at page numbers on the
21 bottom.

22 A (indiscernible) exercise (indiscernible) human and
23 material (indiscernible) sources of services in a non-
24 transitory manner. Yes. Okay. Doesn't use the word
25 employees.

1 Q I'm sorry. My question was different. It doesn't use
2 the word office, correct?

3 A It does not use the word office. Yes.

4 Q And you read the words material resources to be office,
5 correct?

6 A Include office.

7 Q To include office. Okay, and in your opinion, when a
8 Mexican bankruptcy court undertakes the establishment
9 analysis in the LCM, the court is supposed to do so on an
10 entity-by-entity basis and not with a group of debtors as a
11 whole, correct?

12 A Yes.

13 Q So in this case, if there were to be a recognition
14 proceeding on behalf of the 35 debtors, the Mexican court
15 would need to go debtor by debtor to determine on an
16 individual basis whether or not each one has an
17 establishment, correct?

18 A Yes.

19 Q Okay, and therefore, I assume, sir, it is possible that
20 some entities may be found to have an establishment in a
21 foreign jurisdiction and other entities may be found not to,
22 correct?

23 A Yes.

24 Q All right, and in arriving at your opinion in this
25 case, you did not conduct an entity-by-entity analysis,

1 correct?

2 A Correct.

3 Q And that's because you relied solely on the four
4 corners of the Rodriguez declarations, and in that
5 declaration, there is no entity-by-entity analysis, correct?

6 A Correct.

7 Q Okay. Now you are aware, Professor, that of the 35
8 alleged debtors in this case, three of them are incorporated
9 in the United States, correct?

10 A Yes.

11 Q And you know that from the Rodriguez declaration?

12 A Yes.

13 Q And for those specific entities, the U.S. debtors, you
14 did not engage in any analysis of the activities that they
15 engage in in the United States other than what is referred
16 to in the Rodriguez declaration, correct?

17 A Yes. Correct.

18 Q So you did nothing to analyze the contractual
19 relationships that those debtor entities have entered into
20 in the United States, correct?

21 A Correct.

22 Q And you understand that -- you are aware of at least
23 one of those U.S. debtors that has a subsidiary that is also
24 incorporated in the United States, but that is a non-debtor,
25 correct?

1 A Yes.

2 Q You know of one?

3 A Yes, I know of one out of Rodriguez's declaration.

4 Q Okay. Do you know if Rodriguez's declaration refers to
5 more than one that has a U.S. subsidiary?

6 A Not that I recall.

7 Q Okay, and in your opinion, whether the presence in the
8 U.S. of a non-debtor subsidiary of the debtor entity is
9 relevant to the establishment to the establishment analysis,
10 it depends on the circumstances. It depends on what that
11 subsidiary does, right?

12 A Yes.

13 Q And that's important to you because the subsidiary, the
14 non-debtor subsidiary, it's a separate legal entity, right?

15 A Yes.

16 Q Okay, and you didn't do that analysis here, correct?

17 A No.

18 Q Okay. But you agree that analysis should be done to
19 determine the nature --

20 A Of the establishment.

21 Q Okay, and you agree that you should analyze whether
22 that non-debtor subsidiary of a U.S. debtor, for example,
23 has employees, correct?

24 A Could have. could have --

25 Q I'm saying you should inquire into the question of

1 whether it has employees, correct?

2 A Employees, offices.

3 Q Right.

4 A Advisors.

5 Q Right, and you didn't do any of that, correct?

6 A Yes.

7 Q And you should analyze the nature of the economic
8 activity undertaken by the subsidiary, right? Yes?

9 A Right.

10 Q And you didn't do that, correct?

11 A No, I didn't.

12 Q And you should analyze whether that economic activity
13 is transitory or non-transitory in nature, correct?

14 A Yes.

15 Q And you didn't do that, correct?

16 A I didn't do that.

17 Q Now are you aware, sir, from Mr. Rodriguez's
18 declaration that one of the debtor entities in this case is
19 party to a contract that is referred to as a services
20 agreement with an entity called GSI Management USA?

21 A That it's mentioned in Mr. Rodriguez's declaration.

22 Q Right.

23 A Yes.

24 Q And in connection with your analysis as to whether or
25 not there is an establishment in the United States, you did

1 not look at that services agreement, correct?

2 A No, I didn't look at the services agreement.

3 Q Okay. Professor, I'd like to refer you, please, back
4 to your reply declaration, and in particular to Paragraph
5 31, which appears on Page 16. Let me know once you have
6 that in front of you, sir.

7 A We are on the first --

8 Q Your second report.

9 A The reply declaration. Okay. Paragraph 31st?

10 Q Paragraph 31.

11 A Thirty-one.

12 Q Which appears on Page 16. Are you with me?

13 A Yes.

14 Q Okay, and in that paragraph, you will see I'd like to
15 draw your attention to the last point that you make in that
16 paragraph, which begins, third. Do you see where I am?

17 A Yes.

18 Q And you write, third, the existence of various
19 production and licensing contracts with U.S. counterparties
20 cannot satisfy the, quote, "establishment," close quote
21 requirement in the absence of showing that the alleged
22 debtors' activity related to the negotiation and execution
23 of such documents took place at the alleged debtors' place
24 of operations in the United States (the absence of which Mr.
25 Guerra does not contest). Those are your words, correct?

1 A Yes.

2 Q Professor, you don't know one way or the other, do you,
3 whether the execution and negotiation of the contracts of
4 the debtor entities that Mr. Guerra referred to took place
5 in the United States or somewhere else?

6 A Mexico, for instance. Could be.

7 Q Or Mexico, for instance.

8 A Yes.

9 Q But you don't know one way or the other.

10 A Yes, I don't know one way or the other.

11 Q Okay.

12 A I just rely on the declaration of the chair of the
13 board and director general of the company.

14 Q And did you assume that that activity took place in
15 Mexico?

16 A No, I'm not assuming.

17 Q You don't know one way or the other.

18 A Yes, I don't know.

19 Q You didn't ask the question, correct?

20 A Yes, I didn't ask the question.

21 Q You're aware that the Rodriguez declaration refers to a
22 number of contracts, correct?

23 A Yes.

24 Q And none of those contracts are actually attached to
25 his declaration, correct?

1 A Yes.

2 Q And you didn't look at any of them, did you?

3 A I didn't.

4 Q Okay, and you're aware that one of the contracts that
5 Mr. Rodriguez refers to in his declaration is one that a
6 U.S. debtor known as Azteca International has with
7 Univision.

8 A Has?

9 Q With Univision.

10 A Okay. Used to have. I think Mr. Rodriguez referred to
11 that part as something in the past.

12 Q Okay. You're not aware that TV -- I'm sorry. You're
13 not aware that the debtor known as Azteca International,
14 which is a U.S. debtor, currently has a contract with
15 Univision?

16 A No, I don't know.

17 Q You don't know. Okay. All right. Sir, if you can
18 turn in your binder to JX-154. It should be the very last
19 document in your binder.

20 A Please, repeat where I should --

21 Q Sorry, the very last document in the binder. The tab
22 should say JX-154.

23 A Yeah.

24 Q Have you seen this document before, sir?

25 A No, this is the first time I see it.

1 Q Okay. You will see, sir, that it is a press release.
2 It is dated New York, New York, January 17, 2023. Do you
3 see that?

4 A Yes, at the beginning of the article. Yes.

5 Q Right, and if you go to the last page, that's where it
6 says it's a press release. On the very last page, three or
7 three, it says, this press release can be viewed online at
8 and then it gives a website. Do you see that?

9 A Yes.

10 Q Okay. Now go back to the first page of the press
11 release. You see that in the first paragraph, this press
12 release is referring to the launch of something called the
13 Azteca Now premium video app for smart devices. See that?

14 A Yes.

15 Q Now I would like to direct your attention, sir, to the
16 second paragraph of the press release.

17 A Yes.

18 Q And in that paragraph, it reads -- let me just find the
19 spot. I'm sorry, sir. It's on the second page. I directed
20 you to the wrong spot. Turn the page. Page 2 of 3.

21 A Excuse me, I'm not following where we are.

22 Q The second page of that document.

23 A The second page.

24 Q Do you see, toward the top of that page, there is a
25 quote. It reads --

1 A We're very excited.

2 Q Right.

3 A Okay.

4 Q And what it says is, "We are very excited to be able to
5 offer the Azteca Now app in the U.S. market." close quote,
6 stated Jorge Gutierrez paid TV director for TV Azteca
7 Internacional. He goes on to say in this press release, and
8 I quote, "This is one of the most important milestones so
9 far for this app partnership between Azteca and Icaro. I am
10 sure that the thousands of hours of premium content we are
11 offering will connect with American audiences." Professor
12 Mejia, that is not information that you considered when
13 analyzing whether these debtors have an establishment in the
14 United States, correct?

15 A No. This is the first time I see this article that
16 refers to a plan in the future.

17 Q Professor, turn in your binder to the prior document.
18 It is JX-136. Let me know when you have that open. You
19 have that in front of you, sir?

20 A Yes.

21 Q And you'll see on the first page, it simply says
22 Dopamine, correct?

23 A Yes.

24 Q And are you aware that one of the debtor entities in
25 this case is an entity that is named, and I'll butcher the

1 pronunciation, Producciones Dopamina, S.A. de C.V.

2 A It's one of the alleged debtors.

3 Q Yes.

4 A Okay. I don't remember the name, but I can take your
5 word for it.

6 Q Sure. I will represent to you, sir, that it's in the
7 org chart of debtors that is attached to the Rodriguez
8 declaration. And so this exhibit, which is in evidence, is
9 a Dopamine document. And I would like to direct your
10 attention to the third page of that document. And in
11 particular, on the third page, I would like to point you to
12 the very bottom of that page where it is written, currently
13 our first U.S. film owned delivery --

14 A Excuse me. I found another part. I have on Page 4 of
15 8?

16 Q I'm sorry. It's Page 3 of 14. If you look at the
17 bottom --

18 A Three of 14?

19 Q Three of 14. I may have misdirected you. If I did, I
20 apologize.

21 A Okay. Okay.

22 Q Okay, and I'm looking at the very bottom of that page.

23 A Yes.

24 Q And what it says is, and I quote, "Currently our first
25 U.S. film Home Delivery (2022) is being filmed in

1 coproduction with Les Spoirs (sic), and two of the most
2 ambitious original series are underway," and it goes on from
3 there. I take it, sir, because you've never seen this
4 document, that you were not aware that Dopamine is working
5 on or at the time of this document was working on a U.S.
6 film.

7 A This is my first encounter with this information.

8 Q Okay. You can put that document to the side. Let's
9 switch topics for a moment, Professor, and talk for a moment
10 about Mexican public policy.

11 A Okay.

12 Q Now your opinion that you're offering to this court is
13 that any plan of reorganization that the court might approve
14 in this Chapter 11 case would violate Mexican public policy
15 regardless of the terms of the plan. Doesn't matter what it
16 says, correct?

17 A Yes.

18 Q Okay, and it is also your opinion that it is impossible
19 under the LCM for any involuntary Chapter 11 case to be
20 recognized in Mexico, correct?

21 A No, I think that you are putting words that I didn't
22 use. Maybe you can show me --

23 Q Well, Professor --

24 A -- where I did say that.

25 Q Sure. I'm happy to show you, sir.

1 A Please.

2 Q Take a look at your deposition that's in front of you.

3 A Okay. The deposition?

4 Q Yes.

5 A Okay.

6 Q And in particular, I would like you to turn to Page
7 161. Let me know when you're there, sir.

8 A 161, I'm there.

9 Q Okay. Line 15. I ask you the following question.

10 A Yes.

11 Q "Is it your testimony then that it is impossible for
12 any involuntary Chapter 11 case to be recognized under the
13 LCM," and your answer was, "Yes, that is my opinion."

14 A Okay.

15 Q See that?

16 A Yes.

17 Q Okay. Now sir, you agree with me -- you can put the
18 deposition aside. There is no provision in the LCM that
19 expressly says that a foreign involuntary proceeding cannot
20 ever be recognized under the LCM, correct?

21 A Those express words do not exist on the LCM.

22 Q Right, and so --

23 A The reason to my answer can be other.

24 Q And so, Professor, your opinion is that the only way
25 that a Chapter 11 plan could ever be recognized in Mexico

1 would be if TV Azteca consented to the plan, right?

2 A This Chapter 11.

3 Q This Chapter 11.

4 A If TV Azteca's consent in that plan.

5 Q Right, and in addition, the plan would have to comply
6 with all of the rights of the stakeholders under Mexican
7 law, correct?

8 A No, because when reorganization plan is reached in this
9 proceeding, you have to go to the Mexican court and ask for
10 the recognition. The recognition should consider whether
11 what has happened in the Chapter 11 of the foreign
12 proceeding for that case is according to the rest of the
13 Mexican law. And if the debtor has an establishment in
14 Mexico, as it has (indiscernible) it has, then a new
15 concurso should be started, according our the 293 article on
16 LCM. So that's why I'm saying that it's not recognizable,
17 not at this point, but it has to follow all these.

18 Q Okay. So if I understand your testimony correctly,
19 Chapter 11 plan can never be recognized because in the case
20 of an involuntary that lacks the debtor's consent, your
21 interpretation of the LCM is that can never be recognized.
22 And if it is a voluntary plan that TV Azteca consents to,
23 then TV Azteca needs to start a whole new concurso
24 proceeding in Mexico, correct?

25 A No. You're asking me several questions. In your

1 question, there are several questions.

2 Q Okay. Let me break it up.

3 A Let's go part for part, please.

4 Q Okay. So I think we've established that your opinion
5 is that an involuntary Chapter 11 plan can never be
6 recognized in the LCM, correct?

7 A No, no. No, the never is too strong. I understand
8 that this implication --

9 Q Well, sir --

10 A -- the situation is not possible.

11 Q Okay. So --

12 A The situation under LCM must be different.

13 Q Okay. Well, sir --

14 A In the terms that you are asking the question, I would
15 say no. In this terms, this plan of reorganization cannot
16 be recognized or enforced, more than recognized, because
17 what you recognize is the proceeding, not the plan of
18 reorganization.

19 Q Are you done?

20 A Yes.

21 Q Okay.

22 A Sorry if I extended.

23 Q So Professor, we've reviewed your deposition testimony,
24 and at your deposition you very clearly said to me that it
25 is impossible for any involuntary case under the LCM to be

1 recognized. Are you changing your testimony?

2 A No, no, I'm not changing --

3 Q Okay. So is what you told me in the deposition
4 inaccurate?

5 A No, it's not inaccurate.

6 Q Okay. That's fine. Then we can leave that, Professor.

7 A Okay.

8 Q Now if TV Azteca proposes a plan voluntarily in this
9 case, so my hypothetical is this court accepts the Chapter
10 11 petition.

11 A Yes.

12 Q You understand enough about Chapter 11 to know that TV
13 Azteca would then still have exclusivity, would have the
14 right to propose a plan, right?

15 A They had that possibility.

16 Q Right. Yes, and so if TV Azteca did that, they
17 proposed the plan of reorganization, and if that plan
18 complied with the rights of stakeholders under Mexican law,
19 and if the regulators in Mexico, TV Azteca being a regulated
20 entity, have their rights honored in the plan, then that
21 plan could be recognized in Mexico, right?

22 A After following the concurso proceeding in Mexico.

23 Q Sir, let's go to your opening report, which is JX-29,
24 and let's go to Paragraph 64. Let me know when you're
25 there, sir. It's on Page 26, if that helps.

1 A Okay. I have it.

2 Q Okay, and in Paragraph 64, you offer in the second
3 sentence the following opinion: the financial and
4 administrative burdens imposed on the alleged debtors
5 associated with a foreign insolvency proceeding in the
6 United States are far greater than any associated benefits
7 to the alleged debtors' business and their ability to
8 preserve their employees and personnel and protect all of
9 their creditors. That's your opinion, correct?

10 A Yes.

11 Q Okay, and the basis for this opinion is your experience
12 that litigation in other jurisdictions is more expensive
13 than a case in Mexico, right?

14 A Yes.

15 Q Okay, and in arriving at that opinion, you assumed that
16 the alleged debtors in this case would oppose everything
17 being done in this court and would litigate everything that
18 is happening in the United States, correct?

19 A Do I said so in this paragraph? I think I didn't say
20 that the alleged debtors are going to object.

21 Q That was not my question. I'm not suggesting that you
22 said it in the report.

23 A Okay.

24 Q I'm saying that that was your assumption when you
25 arrived at this opinion.

1 A Well, I don't know what is in the head of the alleged
2 debtors in order to how to deal with this. But the
3 possibility you mentioned is a possibility.

4 Q Right, and it's the one you assumed would take place,
5 correct? That they would oppose everything?

6 A Could be.

7 Q Sir, let's switch topics one more time and talk about a
8 number of other Mexican companies that are mentioned in both
9 of the expert reports --

10 A Yes.

11 Q -- that have restructured in Chapter 11. And
12 specifically, I am referring to Satmex, Mexcom, Posadas and
13 Aeromexico?

14 A Yes.

15 Q You're familiar with that back and forth in the report?

16 A Yes. Same general terms. Yes.

17 Q Okay, and you understand that all four of those
18 companies had their COMI in Mexico, correct?

19 A Yes.

20 Q And you also understand that all four of them commenced
21 voluntary Chapter 11 cases in the United States, correct?

22 A Yes.

23 Q And in the case of at least three of those companies,
24 Satmex, Mexcom, and Aeromexico, you agree that, like TV
25 Azteca, they are highly regulated in Mexico, correct?

1 A Yes.

2 Q And you agree that each of those companies was able to
3 implement a Chapter 11 plan in Mexico, correct?

4 A Yes.

5 Q And they did so without having to seek recognition of
6 that plan under the LCM, correct?

7 A Yes.

8 Q Or present --

9 A They haven't seek recognition.

10 Q Right, and nor did they present the plan for approval
11 to any other Mexican court, correct?

12 A Correct.

13 Q And they were able to do that because those Chapter 11
14 plans were consensual, correct?

15 A Yes.

16 Q Okay, and so --

17 A Nobody opposed.

18 Q That's what I mean by consensual. Nobody opposed, I
19 agree with you. So Professor, where a Chapter 11 plan --

20 A Let me clarify my word opposed. They were consenting
21 formally, but it could be some stakeholders that consent
22 without doing anything or even if they could have done it,
23 just as a matter of examining the possibilities in those
24 cases. Okay.

25 Q You done?

1 A Yeah.

2 Q Okay. So where a Chapter 11 plan of a Mexican company
3 that has its COMI in Mexico is not objected to by any
4 creditors in Mexico --

5 A Yes.

6 Q -- it can be implemented in Mexico without recognition
7 under the LCM, right?

8 A Yes.

9 Q Okay, and your opinion is that if even one creditor,
10 just one in Mexico, in any of those cases, decided to oppose
11 the plan in Mexico, or challenge the plan in Mexico, things
12 could have turned out very differently, as you put it,
13 correct?

14 A Yes. And not even creditors, also other authorities,

15 Q Right. Okay. But nonetheless, all of those companies
16 obviously commenced Chapter 11 proceedings here in the U.S.,
17 right?

18 A Yes.

19 Q Okay. Sir, let's switch topics one last time and
20 you'll be happy to know I'm onto the last topic. Or maybe
21 not happy, maybe you're enjoying this. Professor, let's
22 talk about the injunction. Now let's go to your reply
23 declaration, please. It's JX-37 and I want to point you to
24 Page 30. Page 30, 3-0.

25 A Yes. I'm on Page 30.

1 Q You will see that in the middle of the page you have
2 heading Roman Numeral V --

3 A Yes.

4 Q -- which says the injunctions do not prevent the
5 petitioning creditors from commencing an involuntary
6 concurso proceeding in Mexico.

7 A Yes.

8 Q That's your opinion, right?

9 A Yes.

10 Q And in connection with your work in arriving at that
11 opinion, you read the injunctions that have been entered by
12 the Mexican court, correct?

13 A Yes.

14 Q Okay, and you believe that those injunctions would not
15 prohibit the petitioning creditors or the parties that are
16 bound by those injunctions from commencing an involuntary
17 concurso under the LCM because you don't consider an
18 involuntary concurso to be an action that involves
19 collection of debts, correct?

20 A Yes.

21 Q Okay, and you understand, sir, that the trustee for the
22 bonds issued an acceleration notice after the missed
23 interest payment, correct?

24 A Yes, I know that.

25 Q And you also understand that the purpose of the

1 injunctions, among other things, is to effectively prevent
2 that acceleration, correct?

3 A Yes.

4 Q Okay. Now let's look at the wording of the injunction
5 itself, because I think this is important. And you can find
6 it at JX-30 in your binder.

7 A Thirty?

8 Q Thirty, and so the way this exhibit is organized is
9 first is the original Spanish version, and then what follows
10 is the translation. Are you there?

11 A Yes.

12 Q So I'm going to refer you to the English parts because
13 it's the only part I can read. And if you look at the page
14 numbers at the bottom of the page, I would like you to turn
15 to Page 35 of 40.

16 A Thirty-five of 40.

17 Q Right.

18 A Okay.

19 Q Let me know when you're there.

20 A I look for the translation, the original wording in
21 Spanish. Okay. I have both.

22 Q You have both?

23 A Yes.

24 Q Okay. By both you mean you have the Spanish original
25 and the translation in front of you?

1 A Yes.

2 Q Okay, and if you turn to -- so on Page 35 of 40, you
3 will see there's the lead-in, it says consist of, and then
4 there are a number of paragraphs. The first one says,
5 maintain the existing factual situation related to the
6 issuance, and then it refers to the indenture for these
7 notes. Do you see that?

8 A (indiscernible)

9 Q Are you with me?

10 A Yes.

11 Q Okay. Turn to the next page. And on the next page,
12 Paragraph Number 2 states maintain the existing de facto
13 situation until such time as the World Health Organization
14 decrees the extinction of the pandemic known as SARS-CoV-2
15 (COVID-19), it is prohibited to make payments of obligations
16 due prior to the present lawsuit. Do you see that?

17 A Yes.

18 Q So you understand, sir, that the purpose of Paragraph 2
19 is to prevent TV Azteca from paying interest or principal on
20 the notes, correct?

21 A Yes, and to maintain de facto situation.

22 Q Right, and it goes on to say, it is prohibited to make
23 payments of obligations due prior to the present lawsuit.

24 A Okay. Yes.

25 Q See that? Okay, and then let's look at Paragraph 3.

1 What Paragraph 3 says is to maintain the existing factual
2 situation and to this end, the prohibition to the
3 codefendants to initiate and/or file any proceeding for the
4 collection and/or payment of the unpaid principal of the
5 bonds issued under the issuance agreement dated August 9,
6 2017. And it goes on from there. And my question to you,
7 sir, is your interpretation of this language is that despite
8 the injunction's use of the words any proceeding, you do not
9 believe that it applies to an involuntary concurso, correct?

10 A Yes, correct.

11 Q Okay, and you agree with me, sir, that the only court
12 that has the authority to determine if this injunction has
13 been violated is the court that issued this injunction.

14 A I'm not an expert in that kind of situation, but that
15 is my understanding so far.

16 Q And so if any of the entities that are the subject of
17 this injunction were to commence an involuntary concurso,
18 the bankruptcy court in Mexico that would hear that
19 involuntary concurso would not have the authority to rule
20 that the injunction does apply, doesn't apply or to modify
21 the injunction in some way to permit the concurso, correct?

22 A The bankruptcy court in Mexico could issue some
23 precautionary measures like this injunction. But the
24 bankruptcy court has not the authority to intervene in the
25 proceeding for this injunction has been issued.

1 Q Well, so let's make sure we're very clear on this
2 point. So the bankruptcy court in Mexico does not have the
3 authority to rule that this injunction is inapplicable to an
4 involuntary concurso, correct?

5 A Or applicable, to rule about that.

6 Q Right. It cannot rule one way or the other.

7 A Yes.

8 Q Nor can the bankruptcy court in Mexico modify this
9 injunction in any way, correct?

10 A Yes.

11 Q So if creditors were to commence an involuntary
12 concurso that were also the subject of this injunction, TV
13 Azteca, should it decide to enforce the injunction, could go
14 back to the court that issued it, correct?

15 A Yeah, that is a possibility.

16 Q Right. Now let's talk for a minute about the
17 involuntary concurso process in Mexico. Am I correct that
18 should an involuntary concurso be commenced --

19 Q In the United States?

20 Q In Mexico. In Mexico. The first stage of that
21 proceeding would be what I think you refer to as the
22 examination stage, correct?

23 A Yes. Citatorio, in Spanish.

24 Q The cita stage.

25 A Yes.

1 Q Okay.

2 A It's a kind of audit.

3 Q Right. And in that stage, there would be appointed an
4 individual known as a visitador, correct?

5 A Yes, that's correct.

6 Q And that person's function under the LCM would be to
7 determine if in fact TV Azteca is insolvent, correct?

8 A Well, the authorities that the visitador has are mainly
9 two. One, to rank what we call not the LCM, but in the
10 legal term we call it insolvency case that has a purpose to
11 determine whether the debtor is insolvent in that it meets
12 the requirements of the insolvency test.

13 Q Right.

14 A That's the first authority. The second authority that
15 the visitador has is to request the court to provide any
16 precautionary measures that are acceptable or necessary in
17 the proceeding.

18 Q Okay. So let's focus on the first of those. The
19 visitador is tasked with applying an insolvency test to
20 determine if the debtor is insolvent, correct?

21 A Yes.

22 Q And only if the debtor is found by the visitador to be
23 insolvent may there then be an involuntary concurso
24 proceeding, correct?

25 A No, I don't understand your question.

1 Q Sure.

2 A You said only if.

3 Q Let me try it again, sir.

4 A Okay, please.

5 Q In order for there to be an involuntary concurso, the
6 debtor must be insolvent, correct?

7 A And also for a voluntary concurso.

8 Q Okay. But I'm talking about involuntary.

9 A Yes.

10 Q For an involuntary concurso in Mexico, the debtor must
11 be insolvent, correct?

12 A Yes.

13 Q And the person under the Mexican statute that makes
14 that determination is the visitador, correct?

15 A At the end, it's the court, because what the visitador
16 has to do is conduct this examination and then present the
17 facts he has found and issues an opinion about if it is or
18 not insolvent. And the court will decide, taking into
19 account the examination and some other --

20 Q So the visitador conducts an examination of the
21 debtor's books and records, makes a determination as to
22 whether the debtor is solvent or insolvent --

23 A Yes.

24 Q -- and then provides the result of that to the court,
25 correct?

1 A Yes.

2 Q And the court, of course, then has the ultimate
3 decision, but there must be a finding of insolvency,
4 correct?

5 A Yes.

6 Q Okay, and in arriving at the opinions that you do,
7 namely that an involuntary concurso in this case could be
8 commenced, you did not analyze TV Azteca's books and records
9 to determine if TV Azteca meets the insolvency requirements
10 of the LCM, correct?

11 A You mean if I did the job of the visitador?

12 Q Yes.

13 A No.

14 Q Okay. So you --

15 A That's not my job.

16 Q Right. So you don't know one way or the other whether
17 TV Azteca is insolvent, as that term is defined --

18 A Yes, yes -- I don't know --

19 Q Sorry, sir, let me finish my question.

20 A Sorry.

21 Q Just so we have a clean record.

22 A Yes, yes. I apologize.

23 Q You remembered that from the deposition.

24 A Yes.

25 Q So you don't know one way or the other, sir, whether TV

1 Azteca would meet the requirements of being insolvent, as
2 those requirements are laid out in the LCM, correct?

3 A Yes.

4 Q Okay, and you -- am I also correct, sir, that when you
5 offered the opinion that you do in this report --

6 A Yes.

7 Q -- and again, the opinion I'm talking about is that
8 these injunctions do not prevent the commencement of an
9 involuntary concurso in Mexico, you were not aware that TV
10 Azteca had received ex parte orders from the court that
11 exempted it from any further obligation to publicly file
12 financial statements in Mexico. You didn't know that,
13 right?

14 A Well, I learned afterwards.

15 Q Right. You didn't know about it when I took your
16 deposition, correct?

17 A Yes. Yes.

18 Q You learned about it at your deposition.

19 A Yes, yes.

20 Q So you didn't know about it --

21 A And even I went to read the documents, yes.

22 Q Okay. So you didn't know about it at the time you
23 authored your report.

24 A Yes.

25 Q Okay, and you agree with me, sir, that if the

1 visitador, this is, again, the person that does the
2 insolvency test, they rely on the debtor's books and
3 records, right?

4 A Yes.

5 Q Okay, and if those books and records of TV Azteca that
6 you haven't seen and certainly that we haven't seen do not
7 reflect that the bond debt has been accelerated, then that
8 acceleration could not be the cause of an insolvency,
9 correct?

10 A At least I think the visitador will find that there is
11 the petition of the acceleration. And I'm not talking about
12 applying Mexico and insolvency law, but I'm giving this
13 opinion out of my experience in concurso cases. He can put
14 a note saying that as a contingency.

15 Q Professor, turn to your deposition again, please. Page
16 215.

17 A Two hundred and --

18 Q Fifteen. Let me know when you're there.

19 A It finish on Page 230.

20 Q I'm sorry, 215, 2-1-5.

21 A 2-1-5. Oh, I'm sorry. Okay.

22 Q Line 5 through Line 23 of that page. Did I ask you the
23 following questions, sir, and did you give the following
24 answers?

25 "Question: Okay, and so if a visitador in an

1 involuntary concurso is inspecting the books and records of
2 TV Azteca, and the books and records of TV Azteca reflect
3 that there is no acceleration because they have an
4 injunction rendering the acceleration ineffective?

5 Answer: So they are not insolvent.

6 Question: Right. You agree that they are not
7 insolvent?

8 Answer: Uh-huh.

9 Question: And if they are not insolvent, then they
10 would not meet the requirement for commencing an involuntary
11 concurrent?

12 Answer: That's true."

13 A Yes. The question --

14 Q Yes. That was your testimony, right, sir?

15 A Yes. But the question you made in this part is
16 different than the point I made just right now.

17 Q Now, Professor, when you arrived at your opinion that
18 these injunctions do not prevent the commencement of an
19 involuntary, fair to say that you weren't terribly confident
20 in that opinion?

21 A I'm confident in my opinions, yes.

22 Q Okay. Well, TV Azteca, your client, they asked you if
23 it would be important to you to get another opinion about
24 these injunctions, correct?

25 A Yes.

1 Q Okay, and you said, yes, that would be helpful. I'd
2 love to have another opinion. Right?

3 A Yes.

4 Q Okay, and so what TV Azteca then did is they retained
5 another attorney, correct?

6 A Correct.

7 Q Not the attorney that already represented them in the
8 injunction proceedings, but somebody else.

9 A I don't know whether he was involved. I think no.

10 Q Right. Okay, and you already knew this attorney that
11 TV Azteca hired for purposes of talking to you, correct?

12 A Yes.

13 Q His name is Mr. Sepulveda, correct?

14 A Yes.

15 Q Okay, and you understand that the purpose for which TV
16 Azteca retained this Mr. Sepulveda was so that he could talk
17 to you about your expert opinions concerning the injunction?

18 A No. About what were his opinions. At the end, he
19 conclude with me that they wanted another opinion.

20 Q Sir, turn to your deposition again, Page 50. Let me
21 know when you're there.

22 A Page 50.

23 Q Line 19 through 23.

24 A Yes.

25 Q Did I ask you the following question and you give the

1 following answer?

2 "So is it your understanding then that TV Azteca
3 retained Mr. Sepulveda for purposes of talking to you about
4 your opinions concerning the injunction?

5 Answer: Yes."

6 That was your testimony, right?

7 A Yes.

8 Q Okay. Thank you. Now after you told TV Azteca -- and
9 this conversation that you had with Mr. Sepulveda, it
10 occurred a couple of days before you submitted this
11 declaration, correct?

12 A Yes.

13 Q And it was one conversation?

14 A Just one conversation.

15 Q And you assume that Mr. Sepulveda had the injunctions,
16 but you didn't provide them to him, correct?

17 A I didn't provide them, but he knew the injunction.

18 Q He knew them. So you assumed that TV Azteca sent him
19 the injunction, you think?

20 A Yes.

21 Q Okay, and in your conversation with Mr. Sepulveda, you
22 told him what your opinion was. You said, my opinion is
23 that these injunctions do not prevent the creditors that are
24 bound by them from commencing an involuntary concurso,
25 right? That's what you told him?

1 A Yes.

2 Q And he agreed with you?

3 A Yes.

4 Q And this conversation that you had with Mr. Sepulveda,
5 it was important to you because it gave you confidence in
6 the opinion that you reached, correct?

7 A Yes.

8 Q And you didn't disclose anywhere in your reports that
9 you had this conversation with Mr. Sapalvida, did you?

10 A No. No, I didn't put this conversation in the report.
11 I wrote a couple of days or the day after that. Yes.

12 MR. QURESHI: That's all I have, Your Honor.

13 THE COURT: Okay. I'm going to ask a question
14 about how people want to proceed. I do have questions. I'm
15 sure I warned you this is when I ask my questions. So you
16 all were prepared for that. Do you want to take a break
17 now? Do you want to take a lunch break? Do you want me to
18 go forward with my questions? I'm ready to do whatever you
19 want.

20 MR. CLAREMAN: I think, given the hour, I would
21 suggest a lunch break now.

22 THE COURT: Okay. That's fine. I'm fine with
23 that.

24 MR. CLAREMAN: Okay.

25 THE COURT: I will just remind, of course,

1 Professor Mejan, that you're still under oath, and what that
2 means is you're going to come back and have questions from
3 me, but also, you're not to talk about your testimony.

4 THE WITNESS: Okay.

5 THE COURT: And you're going to come back on the
6 stand. So just warning you you're under oath.

7 MR. CLAREMAN: Yeah, and Your Honor, if I could
8 add, just so it's clear to Professor Mejan, he is not to
9 talk about his testimony with anybody.

10 THE COURT: With anybody.

11 MR. QURESHI: Not just with counsel.

12 THE COURT: Yes. Even on your side --

13 THE WITNESS: Yes.

14 THE COURT: As strange as that sounds.

15 THE WITNESS: Yes.

16 THE COURT: It's our U.S. process. What can I
17 tell you?

18 THE WITNESS: Okay. Okay. Okay.

19 THE COURT: So how long a break would you like?
20 Would you both like to talk to each other and figure it out?

21 MR. CLAREMAN: Your Honor, we're fine with a
22 relatively short break.

23 THE COURT: I'm fine whenever you want.

24 MR. CLAREMAN: 1:30?

25 MR. QURESHI: I was going to say 1:15, but 1:30.

1 MR. CLAREMAN: Whatever you guys say.

2 THE COURT: 1:30. Okay. That's fine.

3 MR. CLAREMAN: Sure.

4 THE COURT: So we can come back on the record at
5 1:30. All right. That's fine. All right. Well, then
6 court is adjourned until 1:30.

7 (Recess)

8 THE COURT: You may be seated. So I'm going to
9 ask my questions. So I think we discussed that. So you
10 might want to sit. It won't be like five minutes. Thank
11 you. Okay.

12 So, Professor, good afternoon.

13 THE WITNESS: Good afternoon, Your Honor.

14 THE COURT: Okay. So now you can educate me on a
15 few things about Mexican insolvency law.

16 So when was the LCM adopted?

17 THE WITNESS: May, the year 2000.

18 THE COURT: Okay. And am I correct that the
19 specialized federal bankruptcy courts were not formed until
20 2022?

21 THE WITNESS: Yes. Last year in March '22, the
22 two bankruptcy courts were created.

23 THE COURT: Okay. And prior to those courts being
24 formed, which Mexican courts then handled the Concurso
25 proceedings from 2000 to 2022?

1 THE WITNESS: Which is the question? What they
2 do?

3 THE COURT: No, which courts. Who was handling
4 the Concurso proceedings before you had these specialized
5 courts, which courts?

6 THE WITNESS: All the district judges in the
7 country.

8 THE COURT: Okay, great.

9 THE WITNESS: The federal district judges.

10 THE COURT: Okay, thank you. Just give me a
11 second. I'm making a note to myself. All right.

12 Mr. Qureshi had asked you a bit about the
13 insolvency test for Concurso.

14 THE WITNESS: Yes.

15 THE COURT: I have some other questions myself
16 about the insolvency test.

17 THE WITNESS: Okay.

18 THE COURT: So I hope you'll bear with me.

19 THE WITNESS: Okay, thank you.

20 THE COURT: So first, in the insolvency test, what
21 are considered to be outstanding liabilities?

22 THE WITNESS: There is -- well, let me go -- the
23 balance sheet of the debtor has to be considered. In the
24 liability part of the balance sheets, the debtor will be
25 insolvent if he has the 35 percent of the total of

1 liabilities overdue for more than 30 days. That's in the
2 part of liabilities. And in the part of assets, the debtor
3 is insolvent if he or she doesn't have the 80 percent of the
4 liabilities overdue in liquid assets. And the law gives a
5 definition of what liquid assets are.

6 THE COURT: that was going to be my next question.
7 So what are liquid assets?

8 THE WITNESS: Okay. Cash, banks. The...

9 THE COURT: Accounts receivable?

10 THE WITNESS: The accounts that are collectable in
11 the next 90 days. Some investment in a short period of time
12 for the next days. That's the idea.

13 THE COURT: Okay.

14 THE WITNESS: The debtor is insolvent, and there's
15 a difference if the case is a voluntary case or an
16 involuntary case. If there is a voluntary case, only one of
17 those presumptions must be complied, the one of the
18 liabilities or the one of the assets. And if it is an
19 involuntary case, then both extremes can be met in order to
20 be insolvent.

21 THE COURT: Must be met, right?

22 THE WITNESS: Excuse me?

23 THE COURT: They must be met.

24 THE WITNESS: Yes, they must be met. In an
25 involuntary case, both must be met. Yes.

1 THE COURT: Okay. And then Mr. Qureshi was
2 talking to you a little bit about the visitor. What
3 information does a visitor typically have access to when
4 it's doing its job? When it's appointed and has to come in,
5 what does it do?

6 THE WITNESS: Yes. He is allowed to go through
7 every document, through all of the books of the debtor and
8 even has the authority to talk and to ask questions with the
9 main directors, the main officers, and even to advisors that
10 the Debtor has had in order to compose the financial
11 situation.

12 THE COURT: Okay. All right. For a company the
13 size of the alleged debtors -- obviously I know there's more
14 than one company, 35 companies. But how long do you
15 estimate it would take a visitor to examine the records of
16 the companies and be able to make a determination as to
17 their solvency?

18 THE WITNESS: The law establishes 15 days.

19 THE COURT: Fifteen? One five?

20 THE WITNESS: Fifteen days.

21 THE COURT: One five.

22 THE WITNESS: One five, yes.

23 THE COURT: Oh wow.

24 THE WITNESS: And he is able to ask for an
25 extension for another 15 days.

1 THE COURT: Okay. So it's relatively quick.

2 THE WITNESS: Yes. At the end it will be 30 days.

3 THE COURT: Okay. All right. Have there been any
4 involuntary Concurso proceedings filed against a large
5 corporation in Mexico?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Give me an example of one.

8 THE WITNESS: An involuntary Concurso. Let me
9 remember. The balance between involuntary and voluntary
10 concurso are 60 percent on the voluntary cases and 40
11 percent of the involuntary cases. And I don't remember
12 right now at this moment the name of a large company --

13 THE COURT: All right. Well, you can think about
14 it while I'm asking the rest of the questions. Because, you
15 know, you're invoking -- you're suggesting that there's a
16 procedure that's available to the creditors, the petition
17 creditors here. But what I often have found when I've had
18 foreign insolvency proceedings to me is there's things that
19 happen in smaller circumstances. They don't always happen
20 for bigger corporations. Because when someone files a
21 concurso like that, just like it would be here with an
22 involuntary, it gets a lot of publicity I'm sure in a large
23 case.

24 THE WITNESS: Yes.

25 THE COURT: There's a lot of -- it's -- you know,

1 you will want to make sure you can actually possibly be
2 successful if you're going down that way.

3 THE WITNESS: Yes.

4 THE COURT: Because we're going to talk about what
5 happens maybe if it's not. And that's not different than
6 here I'm guessing.

7 THE WITNESS: Yes.

8 THE COURT: So that's why we don't see very many
9 involuntary petitions filed against large corporations here.
10 It does happen.

11 THE WITNESS: Yes. Okay.

12 THE COURT: It's not never in Chapter 11, but it's
13 not that common.

14 THE WITNESS: Yes.

15 THE COURT: And part of it is for the reasons I
16 said.

17 THE WITNESS: Yes. And we have made some
18 comparisons with other countries in general. And I remember
19 the case of the U.S., the numbers they gave me was 90
20 percent of the cases were voluntary and the rest were
21 involuntary. And in some cases, there have been both
22 filings.

23 THE COURT: Yes. Yes. Here in the United States
24 for sure.

25 THE WITNESS: Happens the same.

1 THE COURT: Yes, same. It's happened where one
2 files one and then the other person files another. It does
3 happen.

4 THE WITNESS: Yes, yes.

5 THE COURT: So we've had a voluntary sometimes
6 followed by an involuntary. Because people would like to
7 have it in another jurisdiction. We've had involuntaries
8 followed by a voluntary. We have a process here where
9 people can just consent after an involuntary is filed if
10 they don't want to fight it. We have a number of types of
11 things. But we have some big cases where we've had a fight
12 between the involuntary and the voluntary that were filed in
13 different locations. That's not unusual. Caesars is a good
14 example.

15 THE WITNESS: It's kind of forum shopping.

16 THE COURT: Yeah. We have some of that too, yes.
17 Okay. Mr. Qureshi had asked you a little bit and discussed
18 the fact that there were acceleration notices give in August
19 of 2022.

20 THE WITNESS: Yes.

21 THE COURT: So here's my question sort of
22 following up on some of the things that he had asked you in
23 his cross examination, which is does the fact that the
24 acceleration notices were given after the first inunction
25 technically not on -- not that anyone was aware of it,

1 apparently, but that there was somewhere an injunction in
2 place, does that mean that somebody might argue that the
3 principal amount of the notes might not be considered to be
4 outstanding liabilities over 30 days due and owing for the
5 purposes of the insolvency test that we just talked about?
6 Is that possible?

7 THE WITNESS: Yes, that is possible. I think the
8 situation is (indiscernible) going to find that there is a
9 contingency. The accounting people call this situation like
10 that. (indiscernible) contingencies. Maybe this part of
11 your liabilities are overdue, and maybe not.

12 THE COURT: Right. The court is going to have to
13 decide the answers to that, isn't it?

14 THE WITNESS: Yes.

15 THE COURT: Because we can't find that the test is
16 met unless there's actually outstanding liabilities over 30
17 days overdue.

18 THE WITNESS: Yes, yes.

19 THE COURT: So it has to find it is an outstanding
20 liability, not that it's a contingent liability or that's 30
21 days overdue.

22 THE WITNESS: Yes, yes. That's right.

23 THE COURT: Okay. And also for the other part of
24 the test, testifying that it's a matured obligation, right?
25 Because -- if you were considering it.

1 THE WITNESS: Yes. Yes. That's correct.

2 THE COURT: Okay. All right. So now another
3 question about cross quarter world. Since the notes here
4 are governed by New York law, would the concurso court or
5 the visitor defer to the district court in New York to
6 determine what amounts are currently due and owing under the
7 notes?

8 THE WITNESS: Could be possible because the
9 authority that the visitor has is very wide. So it could be
10 asking questions for the foreign court, yes.

11 THE COURT: All right. So then we talked a little
12 bit about obviously recognition. And obviously we do that a
13 lot here in this court. So my question for you really has
14 to go with what would the concurso court think of some
15 things. Because I know how we would do them here, but that
16 doesn't mean that's how they would do them in the concurso
17 court.

18 Has the concurso court had to actually consider
19 the COMI of a group of foreign debtors in a recognition
20 proceeding?

21 THE WITNESS: Yes. I think it's the tax -- the
22 bankruptcy court asks in order to define whether the foreign
23 debtor has a situation that can be defined as a COMI or as
24 an establishment or neither of those.

25 THE COURT: Okay. And then how do they approach

1 analyzing the COMI of multiple debtors? I mean, I know here
2 in the U.S. in front of us we do it the way I think that you
3 said you were guessing that the concurso court would do,
4 which was on an individual-by-individual entity basis.

5 THE WITNESS: Yes.

6 THE COURT: That's what our caselaw says as well
7 here in the SDNY. So what factors does the concurso court
8 consider when it does its analysis? Here we have a number
9 of tests that have been applied, some of which people have
10 used in Europe, some in addition to here. I'm just not
11 familiar with what people do in the concurso court. So I
12 would like to hear from you what factors would the concurso
13 court consider in its COMI analysis.

14 THE WITNESS: Yes. Well, we have some provisions
15 referring to the insolvency of corporate groups. But what
16 the -- and the dispositions we had in the LCM is very narrow
17 because it deals only with the jurisdiction of the court who
18 is going to take those cases. And one of the articles
19 provide that it is possible to file the concurso situation
20 together for several or all of the members of the group and
21 then the court will have all those cases. But he has to
22 conduct the concurso in a one-by-one case. Mainly if they
23 are put under the same number of docket but they are
24 separated in order that the decision made in one of the
25 proceedings does not collide with the decision made in

1 another of the companies subject to that.

2 THE COURT: Okay, understood. And what factors
3 does the court look to when it's doing the analysis? I
4 think you mentioned some of them of course. And I want to
5 get back and ask about establishment in a second.

6 THE WITNESS: Yes.

7 THE COURT: But what other things does it look at?
8 Does it look at -- you know, here of course we look at I
9 guess the place of -- the law under which it's organized.
10 Obviously different factors including things that you
11 mentioned and establishment exists.

12 THE WITNESS: Yes, yes.

13 THE COURT: But also just wherever there's other
14 factors about the company's liabilities and assets, like
15 where are their employees, where are their boards of
16 directors, what happens in their business, where does it
17 take place, et cetera. We have pretty broad things we look
18 at here under various tests.

19 THE WITNESS: Yes.

20 THE COURT: Is that similar in --

21 THE WITNESS: Yes, that is similar. The burden to
22 get all the evidence is the -- it's put on the part who is
23 filing.

24 THE COURT: Same here.

25 THE WITNESS: Okay. So they have to provide all

1 the evidence to the court in order to decide.

2 THE COURT: Okay. Mr. Qureshi asked you a bit
3 about establishment and went through the definitions.

4 THE WITNESS: Yes.

5 THE COURT: I have one question as follow-up
6 there. Has the concurso court itself issued any opinions
7 interpreting establishment under the LCM 279, and if so,
8 what did it hold?

9 THE WITNESS: What -- you're asking for a specific
10 case?

11 THE COURT: Yes. I'm asking you where -- you
12 know, because there seems to be obviously a disagreement
13 about how narrowly or how broad establishment should be
14 considered.

15 THE WITNESS: Yes.

16 THE COURT: And the party that would have to
17 consider what establishment means is the concurso court, not
18 me. I know how we do it here.

19 THE WITNESS: Okay.

20 THE COURT: So the issue is what would they do --
21 you know, what would -- you know, how would the concurso
22 court -- has the concurso court in other cases, because it
23 has been in existence since 2022, had to interpret what
24 establishment means under the LCM Article 279, and if so,
25 what did it look at? What did it hold?

1 THE WITNESS: Let me tell you an experience I had
2 personally.

3 THE COURT: Okay.

4 THE WITNESS: I was involved in a case where we
5 were asking the recognition of a foreign main proceeding
6 that was conducted in Toronto, I think, in Canada. And we
7 presented the case to the -- at that time the district
8 court, saying that it was the case of a 294 article because
9 it has no establishment.

10 And we said that because we were looking for a
11 domicile of the company in order to serve the filing of the
12 case and we were not able to find any domicile. So we ask
13 the post service, we ask different government agencies,
14 taxes and things like that. And neither of those could
15 provide us with the domicile. So we filed for a 294
16 recognition without a non-main proceeding.

17 THE COURT: Okay.

18 THE WITNESS: But the debtor came with some
19 evidence showing that he indeed had an establishment. And
20 he presented some documents. Leasing of the office, some
21 agreements on the contracts they have conducted which we
22 never had news.

23 So the court ruled in favor of the debtor and said
24 you have to start full concurso because there is an
25 establishment.

1 At the end, we were challenging this decision or
2 thinking and going to a full concurso, but the client stop
3 us and says leave it like that. So we were not able to file
4 the situation.

5 THE COURT: Understood. Okay. That's helpful.
6 So I think you're aware and I think you were asked a little
7 bit about the fact that there is a proceeding going on, at
8 least before it got stayed because of this proceeding, in
9 the district court here in the Southern District of New York
10 about the notes dispute.

11 THE WITNESS: Yes.

12 THE COURT: If that proceeding were to continue to
13 judgement, would it need to be final and non-appealable,
14 that judgment, before it could be enforced under the
15 homologation before the Mexican court? Because that's what
16 I understood I guess your declarations to say. Is that
17 right?

18 THE WITNESS: Okay. Is there a civil litigation?

19 THE COURT: Yes.

20 THE WITNESS: Yes, okay.

21 THE COURT: So it's the litigation that's going on
22 in the district court right now that got stayed because of
23 this bankruptcy proceeding. But it's --

24 THE WITNESS: Okay. In order to be enforced in
25 Mexico, has to be final...

1 THE COURT: Final and non-appealable.

2 THE WITNESS: Res judicata.

3 THE COURT: Right. Okay. Understood. And then
4 how long does a homologation process take place in Mexico?
5 How long does that process take from the time you have a
6 judgment that's final?

7 THE WITNESS: You are asking the only question
8 that a lawyer, a Mexican lawyer never can answer; how long
9 it will take.

10 THE COURT: I understand. But some estimate.

11 THE WITNESS: I'm sorry for giving you so -- so
12 candid answer, but it's very difficult to decide because
13 there are appeals, there are amparos, there are similar
14 things, yes.

15 THE COURT: Okay, all right. My understanding is
16 that it's your position that the concurso court would not
17 enforce a plan in this Chapter 11 proceeding. If I kept it,
18 didn't dismiss it, we had a plan eventually.

19 THE WITNESS: Yes.

20 THE COURT: Which the Debtor didn't agree to, you
21 know, which they won't agree to. Because that would violate
22 Article 157 of the LCM. Is that right?

23 THE WITNESS: It's one of the provisions that
24 could be violated for taking reorganization plan coming from
25 other jurisdiction without taking into account the rights

1 that creditors and the classes of creditors ruled in 157
2 (indiscernible) by the Mexican law. So --

3 THE COURT: Yeah, no, understood. But we have a
4 process here for making sure creditors get taken into
5 consideration. My understanding was that the issue of if
6 there is a non-consensual plan, it might meet the creditor
7 standards because you might be able to do that. You solicit
8 the creditors, they have the right to vote. They get the
9 same treatment they would otherwise under Mexican law. It
10 seems possible to me that you could do that. But what I was
11 just trying to understand is it doesn't seem possible the
12 way you interpret Article 157 of the LCM that you could have
13 a non-consensual plan that the concurso court would enforce.
14 That's what you're saying, right?

15 THE WITNESS: Well, actually, there are not such a
16 thing of a non-consensual plan. The plan has to be
17 consented --

18 THE COURT: Has to be consensual, yes.

19 THE WITNESS: Yes.

20 THE COURT: But if you had one in our proceeding
21 that was not consensual, what you're saying is that they
22 would not enforce it because it has to be consensual.

23 THE WITNESS: Okay, yes.

24 THE COURT: It violates public policy, you have to
25 have a concurso. I just want to make sure I understand

1 that.

2 THE WITNESS: Yes. You are right, Your Honor.

3 THE COURT: Now, in the context of whether there
4 is an involuntary concurso, and that -- just hypothetically
5 assume that one was commenced by the petitioning creditors
6 and ultimately somehow the visitor and the concurso court
7 held that the insolvency test was met. My understanding of
8 what you've explained about Mexican law is that there would
9 still have to be an agreement with the debtors on a plan in
10 the concurso process or the debtors would have -- there
11 would have to be a liquidation, right? Because there has to
12 be an agreement with the creditors and the debtor in the
13 concurso process. And if they can't ever get to that
14 agreement, then the company ends up in liquidation. Is that
15 right?

16 THE WITNESS: Not exactly.

17 THE COURT: Okay.

18 THE WITNESS: The idea is the involuntary case
19 will start. And that means that the first part of the
20 concurso is the receita.

21 THE COURT: Right. But I'm assuming they get past
22 that. It's insolvent.

23 THE WITNESS: Okay, they passed. So the court has
24 to rule whether the debtor is insolvent or not.

25 THE COURT: Right. The court does.

1 THE WITNESS: Okay. And in that part of the
2 judgement, the court has to decide whether it's a main
3 proceeding or a non-main proceeding, the one he is
4 recognizing. And then the next stage, which is actually the
5 first stage of the concurso is the conciliation. So proof
6 of claims come and then a plan has to meet the numbers and
7 the percentages of the 157. And that is in that part where
8 the reorganization plan coming from the recognized
9 proceeding could be -- could be taken into account. And let
10 me add another thing. If the concurso is started because,
11 as I think is the case we are talking about, a non-main
12 proceeding because the debtor has an establishment in
13 Mexico, then the assets and creditors that are to be taken
14 into account in this new concurso are those who are in
15 Mexico. The idea is to treat the establishment like an
16 independent entity.

17 THE COURT: Right.

18 THE WITNESS: And it is possible to mix the
19 decision reach in a foreign proceeding with the decision
20 made in the reorganization plan in Mexico and combine. That
21 is part of the corporation. Unfortunately, Mexico has not
22 adopted, and as I understand it United States cannot either
23 (indiscernible) --

24 THE COURT: Not yet.

25 THE WITNESS: Yeah. You know what I'm talking

1 about.

2 THE COURT: Yeah. Enforcement of the new
3 judgement.

4 THE WITNESS: The enforcement of judgement related
5 with the insolvency cases and the model on insolvency on the
6 group.

7 THE COURT: Yeah, group.

8 THE WITNESS: The groups. And we are finishing on
9 the story about whose law will be applicable, saying what
10 has to supersede the other. The next 40 concurso are the
11 local and they have different provisions. That's the task
12 we have now in (indiscernible) trial. I think in next
13 December we will be trying to finish that part.

14 THE COURT: Understood. Well, it's very hard to
15 always draft these (indiscernible).

16 THE WITNESS: Yes.

17 THE COURT: That's for sure. So let me just go
18 back for a second though. Just assume for the moment this
19 is just purely a Mexican company. Just assume we're talking
20 about hypothetically it's a Mexican company.

21 THE WITNESS: Yes, okay.

22 THE COURT: Okay? And there's an involuntary
23 concurso that's commenced. The visitor and the concurso
24 court hold that the insolvency test was met. Both the court
25 and the visitor agree, it gets approved. My understanding

1 is though in that circumstance, just even though it started
2 as an involuntary concurso, with respect to the plan, it
3 still has to be an agreement of the debtors and the
4 creditors. Is that correct?

5 THE WITNESS: Yes. Yes.

6 THE COURT: And if they can't reach an agreement,
7 then the next step is liquidation. Is that right?

8 THE WITNESS: Yes.

9 THE COURT: Okay, fine.

10 THE WITNESS: But even our law has a provision
11 that permits that reorganization plan could be achieved
12 during the liquidation process.

13 THE COURT: Interesting. Yeah. We don't have
14 that exactly, but we have the idea that you can have a
15 liquidating Chapter 11 plan in the reorganization process.
16 But your reorganization process can be a liquidation in
17 essence.

18 THE WITNESS: Yes, okay.

19 THE COURT: So it's a little different, but
20 interesting. Okay. I have just a couple more questions for
21 you.

22 If the debtors don't -- I guess you've said that a
23 concurso seems the only way for the debtors to reorganize in
24 Mexico.

25 THE WITNESS: Yes. So far, yes.

1 THE COURT: Right, okay. And the Debtors so far
2 obviously have missed some interest payments. I think
3 everyone acknowledges that.

4 THE WITNESS: Yes.

5 THE COURT: And they obviously haven't paid some
6 more interest payments because they're still under the
7 injunction since the original time.

8 THE WITNESS: Yes.

9 THE COURT: And what happens if the debtor doesn't
10 have the ability to refinance the notes? Do you know why?
11 Or what is in consideration as to why a debtor doesn't
12 choose or chooses to commence a concurso proceeding?
13 Because it seems odd to me that if you miss six interest
14 payments, so you clearly aren't paying the funds, you might
15 or might not owe the whole principal depending on what you
16 think about the acceleration provision.

17 THE WITNESS: Yes, okay.

18 THE COURT: You need a restructuring. This is my
19 perspective.

20 THE WITNESS: Yes, yes.

21 THE COURT: So is there some reason why these
22 debtors, if you know, have chosen not to commence a concurso
23 proceeding at this point given all that?

24 THE WITNESS: Yes. The decision can be tried to
25 reorganize through the concurso. And it can be a regular

1 concurso, either voluntary or involuntary. Or if you have
2 the consent of enough percentage of your creditors, you can
3 start a prepackaged concurso.

4 THE COURT: Okay. So they have prepackaged
5 concurso. Okay.

6 THE WITNESS: Yes, yes.

7 THE COURT: Interesting.

8 THE WITNESS: We have the prepackaged. We need
9 the consent of more than 50 percent of the amount of
10 creditors.

11 THE COURT: Okay.

12 THE WITNESS: And that proceeding is the same
13 without the visit part. Because in the case of the
14 prepackaged, we don't need the visit to be conducted.

15 THE COURT: Okay, that's helpful to know.

16 THE WITNESS: The other possibility is forget
17 about the concurso and do a civil litigation asking to
18 repayment of whatever is due.

19 THE COURT: Yeah. So far that doesn't seem like
20 that's going so well, but I hear you. Understood. Okay.
21 All right. Well those were all my questions.

22 THE WITNESS: Okay.

23 THE COURT: So now I'm going to obviously let
24 redirect occur.

25 THE WITNESS: Okay.

1 THE COURT: Thank you for answering my questions.
2 I appreciate that.

3 THE WITNESS: Thank you. Thank you, Your Honor.

4 MR. CLAREMAN: Your Honor, we would like to hand
5 up a redirect binder.

6 THE COURT: Sure.

7 MR. CLAREMAN: I am also handing the witness a
8 redirect binder as well as some demonstrative exhibits which
9 are just excerpts from the LCM.

10 THE COURT: Yes. You may approach.

11 THE WITNESS: Thank you.

12 MR. CLAREMAN: Your Honor, if the binder --
13 Professor Mejan, you have the redirect binder and you also
14 have a demonstrative set of slides.

15 THE WITNESS: Yes.

16 MR. CLAREMAN: Okay. Do you still have the binder
17 that was handed to you earlier by --

18 THE WITNESS: Yes.

19 MR. CLAREMAN: Okay. I may refer to all of these
20 sources.

21 THE WITNESS: Okay.

22 THE COURT: Okay, great.

23 MR. CLAREMAN: Okay.

24 REDIRECT EXAMINATION OF LUIS MANUEL C. MEJAN

25 BY MR. CLAREMAN:

1 Q Professor Mejan, If I can ask you in the demonstratives
2 exhibit to please turn to Tab 13.

3 A Thirteen.

4 Q Yes.

5 A Article 293.

6 Q Yes, Article 293. Now, this provision is not in the
7 model law. Is that correct?

8 A No, it's not correct. Although it is implied somehow
9 in the guide of enactment, there is one part saying that the
10 enactment (indiscernible) take this decision about the
11 establishment. But it's only a commentary done within the
12 guide of enactment.

13 Q Okay. So it's contemplated by the guide to enactment
14 that an enacting state could adopt a provision like this.

15 A Yes.

16 Q Okay. And Mexico made a choice to adopt --

17 MR. QURESHI: Objection, Your Honor. This is
18 redirect. A little bit leading.

19 THE COURT: Okay. All right. Sustained.
20 Objection sustained.

21 BY MR. CLAREMAN:

22 Q Professor Mejan, you testified on cross-examination
23 concerning Article 293. Do you recall being asked questions
24 and discussing this a bit with Mr. Qureshi on cross?

25 A Sorry, I didn't catch the question.

1 Q Do you recall testifying on cross-examination about
2 Article 293?

3 A Yes.

4 Q Okay. Now, can you explain for the Court what the
5 consequence of Article 293 is when a Debtor seeks
6 recognition of a foreign insolvency proceeding in Mexico?

7 A Okay. The idea is that the Debtor whose insolvency
8 proceeding is being recognized owns or has an establishment
9 in Mexico. Then the idea is to start a full, new concurso
10 proceeding of this part of the establishment that the debtor
11 has in Mexico. That's the idea.

12 Q Okay. Now, if you look at the first sentence of
13 Article 293, it says when the recognition of a foreign
14 procedure is requested in respect of a merchant that has an
15 establishment in Mexico, the provisions of Chapter 4 of
16 Title 1 of this law must be observed. Do you see that?

17 A Yes, yes.

18 Q Can you explain what that means?

19 A Yes. That means -- Chapter 4 of Title 1 in the LCM
20 refers to this part of the proceeding which is called the
21 visitor we were talking about. And this is the -- this part
22 of the article says that this visitor and the whole Chapter
23 Four has to be observed and taken into account. So the
24 situation will be that the judge receiving the petition
25 should ask if (indiscernible) to appoint a visitor or run

1 all the visit and all those parts of the proceeding that we
2 have to in order to start a new concurso.

3 Q Okay. And then the second sentence of Article 293 says
4 the judgement that Article 43 of the statute refers to shall
5 also include a declaration that the procedure, foreign
6 procedure in question is recognized. Can you explain what
7 the judgment in Article 43 is?

8 A Yes. It's the logical consequence of the visit. If
9 you see Chapter 4 finish on Article 41, it says that the
10 judge will take all what has to happen in the visitor to the
11 consequences provided by the law. And the next article, 42,
12 ask for provide the judgement. And 43 is the description of
13 what the judgement considering a debtor insolvent or subject
14 to a concurso has to do. Forty-three is a checklist for the
15 court to decide what is going to happen in the concurso
16 because the situation, the legal situation of debtor and
17 even creditors have change as a consequence of the
18 declaration of insolvency of the debtor.

19 Q Okay. And if you turn to Tab 4 of the demonstrative
20 binders, you'll see an excerpt from LCM, Article 43. Do you
21 see that?

22 A Yes.

23 Q Is this part of the list of things that need to be
24 contained in the concurso judgement that's described in
25 Article 293?

1 A Yes, yes.

2 Q Okay. And if I can focus your attention on Article --
3 on Subsection Four.

4 A Yes.

5 Q It states the order to institute -- to the institute to
6 appoint a bankruptcy conciliator through the random
7 mechanism previously established. Can you explain what that
8 provision requires in the concurso judgement that is being
9 referred to in Article 293?

10 A Yes. The order to appoint a conciliator is that with
11 this judgment, the 43 article judgement, starts the first --
12 the first stage of the concurso, which is the conciliation.
13 And meaning original agreement. And in order to comply with
14 this part of the law, the conciliator is an insolvency
15 professional who has the task of trying to reach an
16 agreement among the debtor and creditors to draft and to
17 achieve a plan of reorganization.

18 Q Okay. And if you look at V on that page, it states the
19 declaration of the opening of the conciliation stage unless
20 the bankruptcy of the merchant was filed. Can you explain
21 what the declaration of the opening of the conciliation
22 stage refers to?

23 A Yes. It's exactly the consequences of appointing a
24 conciliator. Maybe the other one around starting the
25 conciliation stage and then appoint the conciliator. But at

1 the end it's the same. Because it means that a period of
2 180 days (indiscernible) possible extension starts in order
3 to reach reorganization plan. And during this conciliation
4 period also the proof of claims is conducted. So we can
5 have a list, a record of who are all the creditors, how much
6 they are allowed to -- the amount of the creditors. And
7 even start the qualification of the creditors belonging to
8 different classes just in case we go into liquidation or if
9 there is a different way to vote on the reorganization plan.

10 Q Okay. And the reference in V that says unless the
11 bankruptcy of the merchant was filed. Can you explain what
12 that means in this context?

13 A Yes. When -- either in a voluntary or an involuntary
14 concurso, the petitioner who is filing can ask that the
15 concurso skips the conciliation and go directly to
16 bankruptcy. If it's an involuntary case, going to
17 bankruptcy only happens if the debtor agrees with going to
18 the liquidation stage. Other than that, the conciliation is
19 taken and directed. And of course it's possible that the
20 debtor ask for the liquidation because he doesn't want to
21 reach an organization plan.

22 Q Okay. Now, if you turn to Tab 5 in the demonstrative
23 binder, we see here LCM -- an excerpt of LCM, Article 157 I
24 believe, which the Court was asking you about a moment ago.

25 A Yes.

1 Q Do you have that? And it states to be effective, the
2 composition deed must be subscribed by the merchant and its
3 admitted creditors that represent more than 50 percent of
4 the sum of. And then there's two roman numerals here.

5 A Yes.

6 Q What is the composition deed?

7 A What is the composition deed? It's a not good
8 translation of the plan of reorganization.

9 Q Okay. And subscribed by the merchant, what does that
10 mean?

11 A The Debtor itself.

12 Q Okay. Is that an agreement by the debtor?

13 A Yes, yes.

14 Q You should turn your phone off.

15 A Sorry, sorry. Turn it off.

16 Q Okay. Now, does Article 157 apply in a concurso
17 procedure that is commenced pursuant to Article 293 when
18 there is recognition sought for a debtor with an
19 establishment in Mexico?

20 A Yes, yes.

21 Q Now, if you could turn back to Article 293. This is
22 Tab 13. It's Tab 13.

23 A Which number tab, sorry?

24 Q Tab 13.

25 A Thirteen.

1 Q One three.

2 A Yeah.

3 Q Okay. And then the last sentence of Article 203 says
4 the commercial bankruptcy shall be governed by the
5 provisions of this law.

6 A Yes.

7 Q Can you explain what that is in the context of --

8 A Yes. That means that the complete concurso proceeding
9 must be conducted.

10 Q Okay. Now, if you turn to Tab 14, you see Article 294.
11 Do you have that in front of you?

12 A Yes.

13 Q All right. And Article 294 states that the merchant
14 does not have an establishment in the Mexican Republic, the
15 procedure shall be processed between the foreign
16 representative and the merchant. And then the next
17 paragraph says the trial shall be processed following the
18 provisions that are included in Title 10 of this law for the
19 ancillary proceedings. Do you see that?

20 A Yes.

21 Q Okay. Now, can you explain when you're under 294 and
22 there is no establishment in Mexico, how does this
23 proceeding differ from the proceeding in 293 where there is
24 an establishment in Mexico.

25 A Yes. the idea is that in this case what the Mexican

1 court is bound to do is cooperate and help the foreign
2 representative of the judgement that has been recognized
3 (indiscernible) that has been recognized in order to
4 complete whatever they need in order to cover for instance
5 the assets that the Debtor has in Mexico or to collect the
6 (indiscernible) recovery on assets, collect the debts for
7 the debtor.

8 Q Okay. And if you look at Article 293, is there any
9 distinction drawn whether the foreign proceeding is
10 determined to be a foreign main proceeding or a foreign main
11 proceeding with respect to Article 293?

12 A No, no. There is no difference. It can be a case of a
13 foreign main or can be a case of a foreign non-main
14 proceeding.

15 Q So in either case is it correct that a full concurso is
16 required?

17 A Yes. Yes.

18 Q Now, you've testified that in your opinion, the alleged
19 debtors do not have an establishment in Mexico. Do you
20 recall that testimony? I'm sorry --

21 A Please repeat the question. I lost one word.

22 Q I'm sorry. Yes. I made a mistake. I made a mistake.
23 You testified that the alleged debtors do not have an
24 establishment in the United States.

25 A I testified that the Debtor in this case --

1 Q Yes.

2 A -- had not establishment in the United States.

3 Q Correct.

4 A Yes.

5 Q Yes. Okay.

6 A I did so.

7 Q All right. So no establishment in the United States.

8 A no.

9 Q If a concurso court were to disagree with that
10 conclusion and find that some of the alleged debtors had an
11 establishment in the United States and a case was brought
12 for recognition in Mexico on the basis of an establishment
13 as a non-main proceeding in Mexico, would a full concurso
14 still be required under Article 203?

15 A Yes, for the goods, creditors and things that the
16 debtor has in Mexico.

17 Q You also testified about the basis for your opinion
18 that there is no establishment for the alleged debtors in
19 the United States. Do you recall that testimony?

20 A Yes.

21 Q If you turn to Tab 10 in the demonstrative binder,
22 we've excerpted a portion of LCM Article 279. Is this the
23 definition from the LCM that defines when there is an
24 establishment in the jurisdiction?

25 A Yes.

1 Q Okay. Now, you were asked questions about employees.
2 You were asked questions about officer by Mr. Quereshi on
3 cross-examination.

4 A Yes.

5 Q Could you explain for us how you believe a court in
6 Mexico will ultimately decide whether there is an
7 establishment in the United States for any of the alleged
8 debtors or not?

9 A Yes. I think the court has to receive evidence and
10 decide whether those possibilities put in the definition
11 have been met. Because it's a very broad definition. So
12 what the Mexican court has to decide is whether -- is there
13 a place, a corporation, economic activity is conducted and
14 if this is in a non-transitory way, then they are using the
15 material and human resources.

16 Q And why is the presence of employees and offices in a
17 specific jurisdiction relevant to the determination of
18 whether there is an establishment?

19 A Because the presence of those circumstances can be a
20 sign that there is an establishment.

21 Q And what does the non-transitory portion of this
22 definition refer to?

23 A I think that's the most difficult term to understand in
24 this definition, the non-transitory. What the guide of
25 enactment explains about not being non-transitory is that

1 the drafters in this case, the (indiscernible) and then
2 after that the model law is not to commit themselves to put
3 an extension of time because this extension of time can be
4 irrelevant even if it's too long or it's too short because
5 what is short and what is long, it's difficult. So they put
6 the non-transitory. And I think where we have to see in
7 order to decide whether it's transitory or non-transitory is
8 the way the debtor is conducting their business. Maybe they
9 can say, okay, we are doing this for now even if that is too
10 long. But we are not planning to stay any more than that.
11 And maybe they will change their mind. I think this is the
12 most difficult part to decide in the finding if some
13 situation meets the definition of establishment.

14 Q Okay. Well, does the existence of employees and offices
15 indicate in some manner that a company has a permanent
16 business in a particular place?

17 A Can be. Can be. The presence can be one of the
18 arguments to say that, yes.

19 Q Okay. Now, you were asked questions by Mr. Qureshi
20 about the work that you did to reach your conclusion that
21 there is no establishment for any of the alleged debtors in
22 the United States. Do you recall that?

23 A Yes, I recall it.

24 Q And you testified that you relied on the declaration by
25 Mr. Rodriguez. Do you recall that?

1 A Yes, that's right.

2 Q Okay. And did you review Mr. Rodriguez's declarations
3 in full?

4 A Yes. Yes --

5 Q Go ahead.

6 A I went through all of them (indiscernible) because I
7 understood that my job was to explain how to interpret some
8 articles of the LCM and not going through the merits of the
9 case. So I didn't conduct any investigation. And mainly if
10 Mr. Rodriguez is the chairman of the board, it is the
11 director general. He is saying that I think he has
12 credibility, at least my credibility.

13 Q And did you also rely on Mr. Rodriguez' declarations in
14 forming an opinion concerning where the COMI of the alleged
15 debtors is?

16 A Yes, yes.

17 Q And what was your conclusion about the COMI of the
18 alleged debtors?

19 A Yes. I think that if there is not an establishment
20 laid along the center of main interest, the center of main
21 interest for me after the declaration of Mr. Rodriguez is
22 very clear that it's in Mexico.

23 Q Okay.

24 A And even as a private citizen, I have seen what TV
25 Azteca has done through many years, so I understand that

1 it's a Mexican company and the center of main interest is in
2 Mexico just out of my observing like a common citizen.

3 Q Okay. If you turn in the redirect binder that you have
4 in front of you to Tab 4.

5 A Tab 4, yes.

6 Q Tab 4, for the record, is JX17, which is the
7 declaration of Rafael Rodriguez Sanchez. Could you turn
8 please to Paragraph 6 of the declaration?

9 A Yes. It says principal place of business is located in
10 Mexico.

11 Q And this is one of the declarations that you testified
12 you reviewed in full in connection with your opinion.

13 A Yes, yes.

14 Q If you look at Paragraph 6, it states TVA's principal
15 place of business is located in Mexico City. The company's
16 infrastructure, operations, and assets are centered in
17 Mexico City, and its directors, officers, and controlling
18 persons reside in Mexico. TVA and its subsidiaries have
19 more than 3,500 employees in Mexico, including more than 250
20 unionized employees whose contracts are subject to Mexican
21 employment law.

22 Can you explain how that information in Mr. Rodriguez's
23 declaration supports or corresponds to your opinion
24 concerning the COMI of the debtors?

25 A Yes. I think the main point is when he refers that the

1 directors, officer, and controlling persons reside in
2 Mexico. Because that is the justification for the
3 infrastructure, operation, and assets centered in Mexico.
4 So there is not only the offices and the main factor like
5 the director officers, all is centered in Mexico City. I
6 think that part is the most relevant for me to reach the
7 conclusion that he has tried saying that he has not
8 (indiscernible) COMI in the United States, but in Mexico.

9 Q Okay. And if you go to Paragraph 10 of Mr. Rodriguez's
10 declaration, that states, TVA's real properties primarily
11 consist of broadcasting, production, and office facilities,
12 almost all of which are located in Mexico, including its
13 principal offices in Mexico City with (indiscernible). Do
14 you see that?

15 A Yes.

16 Q Okay. And can you explain how that type of information
17 is relevant to your analysis of where the COMI is for the
18 (indiscernible)?

19 A The principal offices and operation -- let me say
20 something that maybe is not relevant. But in my way to hold
21 my hat too close for those premises almost every day, twice
22 or three times a day. And even in some cases I was asked to
23 be interviewed, but some reporters choose in that place. So
24 I know -- I know exactly what this premises are in Mexico
25 City.

1 Q Now, if you turn to Paragraph 15 of this declaration.

2 A Yes.

3 Q You testified on cross-examination that in your opinion
4 there's no establishment for the alleged debtors in the
5 United States. Paragraph 15 states, TVA does not operate
6 television networks in the United States today. TVA also
7 has no offices, no operations, and no employees in the
8 United States. Do you see that?

9 A Yes.

10 Q I know you were asked if you did an analysis one-by-one
11 of all the alleged debtors in reaching the conclusion that
12 there is no establishment.

13 A No, I did not, a one-by-one case.

14 Q Okay. And you were asked did Mr. Rodriguez in his
15 declaration do a one-by-one analysis. Do you recall that?

16 A Yes. Yes. Because in this part and in some other
17 parts, he is referring some specific operation of some of
18 the companies belonging to the group.

19 Q Okay. But he's referring to all of the alleged debtors
20 in discussing his declaration where the operations are and
21 offices and employees, correct?

22 A Yes, yes, yes. That's correct.

23 Q And you relied on that broad statement about all of the
24 companies in forming your opinion about each. Is that fair?

25 A Yes.

1 Q Okay. Now, if you turn to Paragraph 19 of Mr.
2 Rodriguez's declaration.

3 A The certain contract agreements.

4 Q Yes. So this paragraph, the first sentence, it says
5 TVA is currently a party to certain contractual agreements
6 with United States entities, including contracts for
7 advertising on Mexican television, original content sales,
8 programming produced in Mexico, and the resale of soccer
9 broadcasting rights. Do you see that?

10 A Yes.

11 Q Okay. How can it be that a party could have contracts
12 with parties in the United States but still have no
13 establishment in the United States? Can you explain that,
14 please?

15 A Yes. I think it's very common. One person residing in
16 one jurisdiction can make some contract with people or
17 companies who has the residence in another country, in
18 another jurisdiction without having an establishment in that
19 part. So if a company wants to go and to make a contract,
20 for instance, Jamaica, that doesn't mean that he is moving
21 to Jamaica his operation.

22 Q Okay. So when there is a contract with a country such
23 as the United States, what do you have to do in order to
24 determine whether or not there is an establishment here or
25 not?

1 A Well, that contract, it has to be seen what kind of
2 contract is that. What kind of goods or obligations come
3 out of that contract? That's the first one. The second one
4 would be is that an economic activity or not. Because it
5 can be some non-economic activity. Third one, how
6 transitory or how permanent is that agreement. And you can
7 say this agreement is undefined about the relation of the
8 agreement or has a period, a duration of X amount of time,
9 short or long, that's subjective.

10 So I think you have to consider all those things around
11 this agreement in order to define if this constitutes or not
12 an establishment.

13 Q And did you consider in the course of your analysis the
14 descriptions of the contractual agreements that Mr.
15 Rodriguez has in his various declarations?

16 A I think the whole idea I got from this declaration is
17 that yes, we have business over there. Of course we do
18 business and agreements in other countries, but that doesn't
19 mean that we are operating in that as part of the work.

20 Q Now, you were shown on cross-examination -- if you
21 still have the book -- you have the book there that Mr.
22 Qureshi was showing you. If you can turn to JX154 in the
23 cross-examination book.

24 A 154 on cross-examination.

25 Q Yeah.

1 A Yes, yes, I remember this.

2 Q I'm turning to it myself. Okay. Now, this is a news
3 article that discusses an agreement or discusses something
4 between ICARO and TV Azteca International. Is that right?

5 A Mm-hmm. Yes, yes.

6 Q And you testified on cross that you had not seen this
7 news article before. Is that correct?

8 A This is -- today was my first time.

9 Q Okay. But if you turn back if you could to JX17, which
10 is the Rodriguez declaration. Do you still have that
11 available to you?

12 A Seventeen, yes.

13 Q Okay. Now, if you look at Paragraph 20.

14 A Yes.

15 Q Okay. You see if you go to the second sentence in that
16 paragraph, it says in 2021. Do you see that?

17 A Yes.

18 Q Okay. It says in 2021, TVA entered into a commercial
19 partnership and licensing agreement with ICARO Media Group
20 Inc., a U.S. corporation, to distribute TVA's content
21 through the ICARO Super App, which is a video management
22 platform that organizes, posts, distributes, and edits
23 content that powers ICARO's direct-to-consumer product
24 suite. The primary anticipated market for this product is
25 Latin America.

1 A Yes.

2 Q The content created for this app is primarily generated
3 in Mexico. Do you see that?

4 A Yes.

5 Q And then to date, TVA has not received any payments
6 from ICARO over that agreement. Do you see that?

7 A Yes.

8 Q Okay. So did you consider the description of the
9 actual contractual arrangement with ICARO when you were
10 forming your opinions in this cases?

11 A Okay, I didn't realize that this piece of news was
12 related with this. How I see this paragraph 20 was some
13 plans for the future for doing some agreements and some
14 operations and still not intended to be a permanent
15 establishment in the foreign country. So now --

16 Q So you relied on Mr. Rodriguez's description of the
17 contractual arrangement --

18 A Yes, yes.

19 Q -- that actually exists as opposed to a news article.
20 Is that fair?

21 MR. QURESHI: Your Honor, I'm sorry. I've given
22 Mr. Clareman a lot of leeway. He really needs to stop
23 telling the witness what his opinions are and asking the
24 witness to agree and ask a proper open-ended question. This
25 is direct.

1 THE COURT: Sustained.

2 BY MR. CLAREMAN:

3 Q So, Mr. Rodriguez, can you see that both Paragraph 20
4 and the news article both refer to ICARO. Is that -- do you
5 see that?

6 A Yes.

7 Q Okay. And in relying on the Rodriguez declaration, you
8 were relying -- well, were you relying on Mr. Rodriguez's
9 description of the --

10 A Yes.

11 Q Okay. Now, if you can turn to -- if you go back to the
12 document that was being shown to you on cross, which is
13 JX36. I'm sorry, 136. I apologize, 136.

14 A Which one?

15 Q It's in the cross book. 136.

16 A One, three, six.

17 Q Yes.

18 A (indiscernible), yes.

19 Q Okay. And you were shown -- and you testified on cross
20 that you hadn't seen this document before. Is that correct?

21 A Yes.

22 Q Okay. Now, you were shown Page 3 of the presentation
23 and you were directed to language about co-production of a
24 U.S. (indiscernible). Or something about a U.S.
25 (indiscernible). Do you recall that? It's at the bottom of

1 Page 3 of JX136.

2 A Yes.

3 Q Yes? Okay. If you turn to Page 5 of JX136.

4 A Yes.

5 Q Okay. Do you see this page that's entitled "Our
6 Business Units"?

7 A Yes.

8 Q Okay. And do you see that there are two geographies
9 here that are circled?

10 A Yes. Mexico and Spain, yes.

11 Q Okay, Mexico and Spain. Is the United States circled
12 on this page?

13 A No.

14 Q Okay. You can put that aside. If I can direct you
15 back to the redirect binder that was just handed up to you.
16 If you go to Tab 5 of the redirect binder, you'll see --

17 A For what?

18 Q Tab 5.

19 A Yes.

20 Q You'll see the reply declaration of Mr. Rodriguez.

21 A Yes.

22 Q If I can direct you -- this is JX36. If I can direct
23 you to Paragraph 3.

24 A The opposition -- okay.

25 Q So this is Mr. Rodriguez's reply declaration.

1 Paragraph 3 towards the bottom states -- actually, it starts
2 towards the top. It says the petitioning creditors point to
3 three other U.S. subsidiaries of TVA, Northstar Media,
4 Northstar McAllen License, and Dopamine Entertainment Inc.
5 as evidence of TVA's U.S. connections. Do you see that?

6 A Yeah.

7 Q Okay. And then it says those entities are not alleged
8 debtors and do not have any current operations in the United
9 States or elsewhere. Do you see that?

10 A Yes.

11 Q Okay. Can you explain how if at all Mr. Rodriguez's
12 statements about Dopamine were relevant to your opinion that
13 there is no establishment in the United States?

14 A Okay. Because having a company organize and -- how do
15 you say incorporated in one jurisdiction doesn't mean that
16 your operation is in that place. And I think either the LCM
17 and the Model Law forbid you from this purpose have the same
18 idea that the domicile has the presumption of being the
19 center of main interest. But that can change. And if the
20 company has started their operation in a different
21 jurisdiction, then you cannot say that you are the owner of
22 a subsidiary incorporated in another country that you are
23 having your COMI over there.

24 Q Okay. And does the LCM establish a presumption if a
25 corporation is organized under the law of a country

1 concerning where its COMI is?

2 A The LCM (indiscernible) a presumption is that the
3 domicile, what we call in Mexico the social domicile, which
4 is the one put on the bylaws and the register, there is the
5 presumption that that part is the real domicile. But if you
6 face in reality -- and that's the word used by LCM, in
7 reality it has not been translated in this copy we have.

8 In the case in reality of that domicile, then you get
9 to go to the place where the main administration is
10 conducted.

11 Q And how does a court know where the main administration
12 is conducted under Mexican law in the LCM?

13 A The petitioner who (indiscernible), either voluntary or
14 involuntary, has to provide the evidence to the court when
15 that happens.

16 Q You were asked questions on cross-examination
17 concerning injunctions that have been issued in Mexico. Do
18 you recall that?

19 A Yes.

20 Q And you testified in response to questions by Mr.
21 Qureshi that the injunctions would not prohibit the filing
22 of a concurso petition.

23 A Yes, that was my interpretation.

24 Q Okay. And can you explain the basis for that
25 interpretation of the injunctions that you reviewed?

1 A Yes. Not having the text, but the idea is that the
2 injunction enjoins the people that have rights with the
3 injunctions to stop any proceeding with the purpose of
4 collecting or being repaid. I think those are the words that
5 used. And why I say that that does not cover an insolvency
6 proceeding, because my idea and my understanding of what an
7 insolvency proceeding is, it's much wider than that. And
8 the purpose of an insolvency proceeding, and especially the
9 one we have in Mexico, is defined in article first of the
10 LCM, is to try to avoid the ruin of the debtor and try to
11 avoid that this ruin can drag along other companies that
12 made business with the company. So the idea I said for a
13 corporate restructuring of insolvency case is that it tries
14 to take together all the legal relationships that the debtor
15 has and try to fix them in order to say, okay, we have had
16 some problems and we are not performing well, but maybe we
17 can find a way to cover that. And maybe we have time, we
18 have some other things. But we need to keep this debtor in
19 operation, and I don't want to cause any damage to you who
20 do business with me.

21 And even if that is not possible, then the output of
22 the concurso proceeding could be the liquidation. But
23 that's the last resort, the last thing that had to happen.
24 Because the main objective has not been accomplished, has
25 not been possible to be accomplished. So I don't see

1 insolvency proceeding as a way to collect on its debt.

2 I think in the civil and the (indiscernible) we have a
3 lot of proceedings to recover one single debt. And the
4 purpose of an insolvency case is much bigger than that.

5 Q Now, did you review or have you reviewed an example of
6 an injunction that was submitted by Mr. Guerra in connection
7 with one of his reports?

8 A Yes. I saw that exhibit, yes.

9 Q Okay. Can you turn to Tab 12 of the redirect binder?

10 A Yes.

11 Q And is this a copy -- do you have it in front of you?

12 A Yes.

13 Q Okay. Is this a copy of the injunction that Mr. Guerra
14 submitted that you reviewed?

15 A (indiscernible) I have the supplemental declaration of
16 Mr. Guerra.

17 Q Right.

18 A But not (indiscernible).

19 Q Okay. Well, but you have reviewed the injunction that
20 he actually --

21 A Yes, yes.

22 Q So if you turn to Page 24 of JX161. I'm sorry, it's --
23 I'm sorry, Tab 12 of the redirect.

24 THE COURT: Sorry, what page?

25 MR. CLAREMAN: So Tab 12 of the redirect binder,

1 page 24 of 28. That's where I am.

2 Do we have copies of JX161 that we can...

3 MR. QURESHI: Tab 12 in my binder is JX130.

4 THE COURT: Yes, so is mine.

5 MR. CLAREMAN: Okay. Well...

6 THE COURT: But, I mean, you think it's in your
7 exhibits. So you could just -- might have to give it to the
8 witness.

9 MR. CLAREMAN: Yes.

10 THE COURT: So what are you using? It was Joint
11 sixty-what?

12 MR. CLAREMAN: This is JX161.

13 MR. QURESHI: That's at Tab 10. It's at Tab 10.

14 MR. CLAREMAN: All right. Apologies, Your Honor.
15 My numbering was different. May I approach the witness just
16 to see if he's looking at the same?

17 THE COURT: Yes.

18 MR. CLAREMAN: Let's go to Tab 10.

19 BY MR. CLAREMAN:

20 A Tab 10?

21 Q Yes. That's JX161 (indiscernible).

22 A Yes.

23 Q Do you see the numbers JX161? Okay. Now, if you turn
24 -- so this is a copy of an injunction you've seen before
25 that Mr. Guerra had attached to one of his declarations,

1 correct?

2 A Yes, that's correct.

3 Q So if you turn to Page 24 of 28.

4 THE COURT: Mr. Clareman, I'm just going to ask
5 you a question before you ask him a question.

6 THE COURT: Yes.

7 THE COURT: On mine, this is shaded. Should --
8 everything is okay with that, right? Just making sure.

9 MR. CLAREMAN: Yes. This is how it was provided
10 to us. The highlighting, is that what's --

11 THE COURT: Fine. Just making sure. Okay.

12 MS. BARTON: Your Honor, I think we put on the
13 exhibit list ones that were highlighted that we had agreed
14 that Your Honor should disregard, but we don't have an
15 objection to it being in evidence.

16 THE COURT: Okay, fine. No, I understand. I
17 already admitted it. I just want to make sure we weren't
18 getting into something or having a confidential issue. Just
19 making sure everything is good as you go along, no
20 confidential problems. Okay.

21 MR. CLAREMAN: Yes. Thank you, Your Honor.

22 BY MR. CLAREMAN:

23 Q Do you see the text at the bottom of that page? It
24 says, "In order to maintain the existing factual situation
25 due to the corporate and commercial purpose of the companies

1 and traders who are now petitioners here too, considering
2 that it is public policy to preserve them and to prevent
3 their failure to pay their obligations from jeopardizing
4 their viability in other business relationships, the
5 initiation or continuation of any enforcement proceeding is
6 prohibited, prevented, and/or denied, including the
7 execution of guarantee trusts, attachment, summons, or
8 bankruptcy proceedings in any of its stages against the
9 following companies. Do you see that?

10 A Yes.

11 Q Okay. How does this injunction differ from the
12 injunctions that you have reviewed that were obtained in
13 connection by TV Azteca?

14 A The difference is very simple. Because in this
15 injunction, bankruptcy proceeding is included.

16 Q Okay.

17 A But it was not in the other injunctions.

18 Q All right. And how if at all does the fact that this
19 injunction refers to bankruptcy proceedings specifically
20 impact your conclusion regarding the effect of the other
21 injunction?

22 A Okay. This Court and in this situation you have to
23 offer all the circumstances but decided that in order to
24 maintain (indiscernible) situation, it was needed to enjoin
25 a bankruptcy proceeding (indiscernible). And the other --

1 the court didn't make that consideration.

2 MR. CLAREMAN: One moment, Your Honor, please.

3 THE COURT: Sure. No problem.

4 BY MR. CLAREMAN:

5 Q Professor Mejan, do you recall that Judge Beckerman was
6 asking you when she was addressing questions to you before
7 my questioning started --

8 A Yes.

9 Q -- about whether you could recall a large involuntary
10 bankruptcy proceedings in Mexico.

11 A In Mexico. Yes.

12 Q And you testified that you couldn't recall any.

13 A I couldn't recall.

14 Q Okay. Are you familiar with a bankruptcy case
15 involving Oceanografia in Mexico?

16 A Yes, yes.

17 Q Do you know whether that was an involuntary bankruptcy
18 or not?

19 A That was an involuntary concurso filed by the fiscal
20 attorney in Mexico, yes.

21 Q Is that a large bankruptcy case?

22 A Yes, a very large bankruptcy case, yes.

23 Q Are you familiar with what Oceanografia is?

24 A Yes.

25 Q Can you describe it for the Court?

1 A Yes. I had some participation in -- an arbitration
2 coming out of those situations. So I am more or less
3 knowledge -- I have more or less knowledge about that
4 situation.

5 Q What is the business of Oceanografia?

6 A They were renting oil platforms for extracting oil.
7 And that was the main business, renting platforms. And I
8 think also vessels to the -- or were renting vessels. I
9 don't remember whether they were providing the vessels or
10 renting the vessels. But their business was related with
11 extracting oil. And they have some agreements with the
12 Mexican company that runs all the oil business in Mexico,
13 which is (indiscernible) and subsidiaries. And in that
14 capacity, they perform some other agreements with third
15 parties involving that business.

16 Q And are you familiar with a bankruptcy case involving a
17 company called Altos Hornos de Mexico?

18 A Yes. Well, that was one case that started before the
19 LCM was adopted. That was started at the end of '99 or '98.

20 Q And what about Corporacion Geo, G-E-O? I may be
21 mispronouncing that.

22 A Corporacion...

23 Q Geo, G-E-O.

24 A Oh, I don't identify the -- oh, G-E-O, yes. It's a
25 builder of homes. Yes, it's a company that build homes and

1 sell homes with mortgages and things like that. Yes.

2 Q Do you know if that was a voluntary or an involuntary
3 case?

4 A No, I don't -- I remember that at the time of
5 Corporacion Geo, we say in Spanish, became involved in
6 bankruptcy, there were several other builders of homes
7 involved in the insolvency cases. And I don't recall
8 whether this one was involuntary or voluntary. I don't
9 know.

10 Q Okay. I'll just ask about one more. Are you familiar
11 with the bankruptcy case involving EchoPAC de Mexico?

12 A EchoPAC? No.

13 Q No, okay.

14 MR. CLAREMAN: Thank you, Your Honor. I have
15 nothing further.

16 THE COURT: Recross?

17 MR. QURESHI: Your Honor, very briefly, if I may.

18 THE COURT: Sure, yes.

19 RE CROSS EXAMINATION OF LUIS MANUEL C. MEJAN

20 BY MR. QURESHI:

21 Q Again, for the record, Abid Qureshi on behalf of the
22 petitioner-creditors.

23 Professor, just a few follow-up questions for you. I
24 want to start with the subject that the judge asked you
25 about, which was the homologation process.

1 A What was that?

2 Q The process for enforcing judgements in Mexico.

3 A Okay.

4 Q Okay. So -- and the Court asked you if it is correct
5 that before the petitioning creditors here could enforce a
6 judgement in Mexico -- and I'm talking about the action that
7 is in the federal district court here, the one that was
8 stayed --

9 A Okay.

10 Q -- that it would need to be a final and non-appealable
11 judgement. And you agreed with that, correct?

12 A Yes. Res judicata, yes.

13 Q Okay. And you were then asked how long would it take -
14 -

15 A Yes.

16 Q -- to take that judgement, have it enforced in Mexico.
17 Not through the LCM, but through the regular enforcement
18 process, right?

19 A Yes.

20 Q And you were not able to tell the Court how long it
21 would take, correct?

22 A Yes, yes.

23 Q Fair to say it would take years?

24 A Could be.

25 Q And you agree that under the model law, one of the

1 purposes of the model law is to provide creditors with a
2 faster way to get recognition of judgements and ultimately
3 to enforce judgment in the case of an insolvency, correct?

4 A No, I don't think that the objective is to short any
5 other proceeding.

6 Q You don't agree with that? Okay.

7 A No.

8 Q Okay. Sir, just one other area. You were asked by Mr.
9 Clareman a number of questions about establishment. And you
10 gave an example of how an entity can have contractual
11 relationships but still not establishment. Do you recall
12 that?

13 A Yes.

14 Q And the example that you gave is that one person
15 resides in one country and enters into contracts with
16 somebody in another country. Right?

17 A Yes.

18 Q Doesn't mean they have an establishment in that other
19 country, correct?

20 A Yes.

21 Q But you agree with me that if both of those parties
22 reside in the same country, the question of whether there is
23 an establishment in that country is a slightly different
24 one, correct?

25 A No, I don't -- I don't follow. They decide in the same

1 country what's the purpose of defining an establishment.

2 Q So if -- in the case of TV Azteca, you understand that
3 there are some debtors that are incorporated in the United
4 States, correct?

5 A Yes.

6 Q And you understand that those debtors that are U.S.
7 debtors, they are U.S. entities, have entered into contracts
8 with other U.S. entities in the United States.

9 A Yes.

10 Q Okay. And for your purposes, is it your testimony that
11 for purposes of analyzing whether there is an establishment,
12 that that is the same as analyzing a contract that was
13 entered into by a Mexican entity?

14 A Yes. Let me explain why I said that. It is possible
15 that in a corporate group the main direction of this group
16 can operate through a foreign company, a foreign-organized
17 company. And get that company asking or conducting
18 contracts with third companies. But still all the operation
19 comes from the main center of the operations in the regional
20 country. That's what I tried to explain as a possibility.

21 Q All right. Well, Professor, let's look at in the
22 redirect binder that you were provided by Mr. Clareman --

23 A Redirect, okay.

24 Q Yes, at Tab 5 is the reply declaration of Mr.
25 Rodriguez. And it is JX 36 for the record.

1 A Yes.

2 Q Okay. Turn if you could to Paragraph 6.

3 A Yes.

4 Q And this is the paragraph you will see that discusses
5 contracts involving three alleged debtors; TV Azteca, AIC,
6 and Azteca Sport. And you understand those to be the three
7 U.S. debtors, correct?

8 A Yes, (indiscernible) TV Azteca, AIC, and Azteca Sport.
9 Okay.

10 Q Now, look onto the following page, Page 4. And you
11 will see there is a reference in that part of the paragraph
12 to a contract with -- between AIC and Univision.

13 A I don't find it. Where is that place? Paragraph 7?

14 Q No, Page 4.

15 A Page 4, yes.

16 Q It's still in Paragraph 6. It's towards the top.

17 A Okay.

18 Q The sentence begins, "The opposition also notes".

19 A Okay.

20 Q Right? Between 2016 and 2023 under a currently-expired
21 contract, AIC licensed soccer broadcast rights to Univision
22 for \$259 million, correct?

23 A Yes.

24 Q Now, when we spoke about this earlier, you told me that
25 your understanding was that the Univision contract was

1 expired, correct?

2 A I said that Univision was expired?

3 Q That was your recollection of the Rodriguez
4 declaration, right?

5 A Yes, okay. Okay, yes.

6 Q So look at the next sentence. The next sentence says
7 AIC is party to a new soccer rights agreement with Univision
8 and is less lucrative than the previous agreement. Do you
9 see that?

10 A Yes, yes. I remember, yes.

11 Q Now, you don't know -- the prior contract it says in
12 this declaration was for \$259 million. You don't know how
13 much the new contract with Univision is for because you
14 didn't review it, correct?

15 A Yes, that's right.

16 Q Okay. And if you continue reading, you will see in the
17 last sentence that that contract, which Mr. Rodriguez
18 characterizes as much smaller than the aggregate amount of
19 the expired contract, lasts until 2030, correct?

20 A Yes.

21 Q Okay. So you understand this is a contract between two
22 U.S. entities. And it goes until '23, correct?

23 A Yes.

24 Q And you don't know because you haven't looked how much
25 revenue will be generated in the United States from this

1 contract, correct?

2 A Yes. I only know that it's lesser than the previous
3 one.

4 Q Right. But whatever it is, you are confident that it
5 is insufficient for there to be an establishment in the
6 United States for AIC, correct?

7 A Yes, that's correct.

8 Q Okay.

9 MR. QURESHI: That's all I have, Your Honor.

10 THE COURT: Okay. All right. Thank you. Okay.
11 He's putting his things down here. Just give me one second.
12 Okay.

13 I assume you've -- Mr. Clareman, any further --

14 MR. CLAREMAN: I have no further questions.

15 THE COURT: Okay. Professor, thank you so much
16 for coming today. I appreciate it. I know it's a very long
17 trip for you as well, and thank you for being here. And you
18 may step down.

19 THE WITNESS: Okay. Thank you very much, Your
20 Honor.

21 THE COURT: Yeah, you can leave the books. Don't
22 worry about that.

23 MR. CLAREMAN: Your Honor, as I mentioned at the
24 outset of the proceedings today, Mr. Rodriguez isn't
25 testifying live by agreement between the parties. We are

1 offering his testimony by way of declaration. Those
2 declarations are in evidence at JX 17 and JX 36. And the
3 parties have agreed to also admit Mr. Rodriguez's deposition
4 testimony, which is also --

5 THE COURT: Right. Which I believe I also already
6 accepted into evidence.

7 MR. CLAREMAN: Yes.

8 THE COURT: Okay. That's right. And I look
9 forward to my evening reading.

10 MR. CLAREMAN: All right. And we have no further
11 witnesses, so we rest. Thank you.

12 THE COURT: All right. Mr. Qureshi?

13 MR. QURESHI: Your Honor, our next witness is Mr.
14 Guerra. Our next and only witness, our expert. If I could
15 suggest a short break?

16 THE COURT: Sure. How long would you like?

17 MR. QURESHI: Ten minutes.

18 THE COURT: Ten minutes is fine. All right. We
19 will reconvene at -- I guess it's approximately quarter
20 after.

21 MR. QURESHI: Very well. Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Recess)

24 THE COURT: You may be seated.

25 MR. GILLER: Good afternoon, Your Honor. David

1 Giller --

2 THE COURT: Good afternoon.

3 MR. GILLER: Good afternoon, Your Honor. David
4 Giller of Akin Gump. Petitioning creditors would like to
5 put forward Jesus Guerra. His opening report can be found
6 on JX 123 and his supplemental declaration on JX 130. We're
7 submitting them in agreement and (indiscernible) direct. I
8 would ask him to take the stand.

9 THE COURT: Yes, please.

10 MR. GUERRA: Good afternoon, Your Honor.

11 THE COURT: Good afternoon to you, too. Would you
12 please raise your right hand? Do you swear that the
13 testimony you are about to give is the truth, the whole
14 truth, and nothing but the truth?

15 MR. GUERRA: Yes I do, Your Honor.

16 THE COURT: Thank you very much. Okay.

17 MR. COHEN: Good afternoon, Your Honor. Jay Cohen
18 for the alleged debtors.

19 THE COURT: Good afternoon, Mr. Cohen.

20 CROSS-EXAMINATION OF JESUS GUERRA

21 BY MR. COHEN:

22 Q Good afternoon, Mr. Guerra.

23 A Good afternoon, Mr. Cohen.

24 Q We met at your deposition last week.

25 A Yes. It was a pleasure.

1 Q Okay. And we're going to do the same thing that Mr.
2 Qureshi did with Professor Mejan. So we have a book for you
3 with some exhibits and a few other things that I'll explain.

4 A Thank you.

5 THE COURT: Thank you.

6 BY MR. COHEN:

7 Q So your book, Mr. Guerra, has your declarations and
8 various other documents. It has the English and Spanish
9 versions of the LCM. And I'm also going to use this
10 demonstrative --

11 THE COURT: Oh, the same? No, I have
12 (indiscernible). That's fine.

13 BY MR. COHEN:

14 Q Exhibits that has certain provisions of the LCM.

15 MR. COHEN: Are you all set, Your Honor?

16 THE COURT: Almost. Sorry.

17 MR. COHEN: Okay.

18 THE COURT: Okay. Now I'm good. Thanks. Sorry.

19 BY MR. COHEN:

20 Q And so this demonstrative has provisions of the LCM.
21 If you want to refer to the original in English or Spanish,
22 feel free. I'm trying to make it so there are fewer pieces
23 of paper to move around. Okay?

24 A Thank you.

25 Q Does that sound reasonable?

1 A Yes.

2 Q Okay.

3 MR. COHEN: Do you have copies?

4 UNIDENTIFIED SPEAKER: Yes, we do. Thank you.

5 MR. COHEN: May I proceed, Your Honor?

6 THE COURT: Yes, you may.

7 BY MR. COHEN:

8 Q Mr. Guerra, you are a named partner in a law firm in
9 Mexico, correct?

10 A Correct.

11 Q And you spend about half of your time on restructuring
12 matters?

13 A Yes.

14 Q And about half the time you actually litigate
15 commercial cases, correct?

16 A Correct.

17 Q And you have an LLM from BU Law School?

18 A Correct.

19 Q And you're a member of the New York Bar?

20 A Correct.

21 Q But you're not offering any opinions here today by U.S.
22 law, right?

23 A Absolutely correct.

24 Q And no opinions about U.S. bankruptcy law, correct?

25 A Correct.

1 Q Okay. And is it fair that you have -- your LLM was not
2 in bankruptcy, it was in more general subject?

3 A One of the subjects of the LLM was in bankruptcy, but I
4 would say, as my master's degree establishes, that it has --
5 I don't recall the exact word, but it is -- it has a mastery
6 in international business practice.

7 Q Okay. And you've never appeared in a U.S. bankruptcy
8 proceeding, for example, as a lawyer, right?

9 A No, never.

10 Q And I think you say in one of your declarations that
11 you've been involved in a number of cross-border
12 bankruptcies. Is that right?

13 A Yes, that is correct.

14 Q But you've never participated in a proceeding in Mexico
15 in which a party attempted to recognize a U.S. judgement in
16 Mexico, correct?

17 A That is correct.

18 Q So if you were to be involved in this one, this would
19 be the first one, right?

20 A Correct.

21 Q And in fact, you're not aware, are you, of any
22 proceeding in Mexico in which recognition was given over the
23 objection of the debtor?

24 A I have not.

25 Q No, right?

1 A Yes, no.

2 Q Okay. So let's look at your first declaration, which
3 is JX 123. And that's behind Tab 1 of your cross book.

4 A Yes.

5 Q Let me know when you're there. And would you turn to
6 Paragraph 10, the summary of your opinions, on Page 4. Let
7 me know when you have that.

8 A I am here.

9 Q Okay. And in Paragraph 10 -- actually, Paragraph 11,
10 the summary of your opinions tender the questions, and 11
11 are your answers, right?

12 A Yes.

13 Q Okay. And in Paragraph 11, what you say is a plan of
14 reorganization entered in Chapter 11 cases may be
15 effectuated in Mexico without formal recognition of your
16 Title 12 or other applicable Mexican law which has occurred
17 in other cases, including most recently Aero Mexico. Do you
18 see that, sir?

19 A Yes.

20 Q Okay. Now, the cases that you refer to were all
21 voluntary, consensual cases in the United States, correct?

22 A Correct.

23 Q So if we turn to Paragraph 35 of your declaration --
24 let me know when you're there. You'll see it starts with a
25 reference to the Aero Mexico Chapter 11.

1 A Yes.

2 Q So that was a consensual bankruptcy in the U.S., right?

3 A Yes.

4 Q And then you refer to (indiscernible). Do you see
5 that, sir?

6 A Yes.

7 Q And that was a consensual, voluntary proceeding in the
8 U.S., right?

9 A That I understand.

10 Q And you refer to NexCom. That was another consensual
11 proceeding?

12 A Yes.

13 Q And Grupo (indiscernible) is another consensual
14 proceeding, correct?

15 A Yes.

16 Q Now let's turn -- I think Professor Mejia referred to
17 the LCM. And I think in our deposition we talked about the
18 concurso law. Do you understand it's the same thing?

19 A Yes.

20 Q I'll use one or the other and you'll use whichever one
21 you are more comfortable with.

22 A I will understand.

23 Q Okay, thank you. And let's turn to generally the
24 procedure for recognizing the U.S. bankruptcy judgement in
25 Mexico. And of course it's governed by the Concurso law.

1 Right?

2 A Yes.

3 Q Okay. And if we turn to Title 12 in the Concurso,
4 let's turn -- before we get to the specific provisions,
5 let's turn to JX 43, which is the English language version
6 of the entire law that's behind Tab 3 and turn to Title 12,
7 which begins just before Article 278. That's why I'm going
8 to give you the tab so you don't have to put your pen down
9 every time.

10 A I will be using both English and Spanish versions.
11 So...

12 Q Whatever you are most comfortable with. So am I
13 correct that between Article 278 through Article 310, those
14 are the provisions of the concurso law which deal with the
15 recognition of foreign judgements. Is that right?

16 A Yes, that is right.

17 Q Okay. And now let's if we can go to the demonstrative
18 book. But you don't have to. I'm going to go to Article
19 292. And Article 292 is behind Tab 12 of the demonstrative
20 book. But again, whichever version you want to use. The
21 words are all the same.

22 A Sorry, which tab in the demonstrative?

23 Q It's Tab 12, Article 292.

24 A Thanks. I'm here.

25 Q And this is the first provision in the concurso law

1 which deals with recognitions of foreign judgements, right?

2 A That is correct.

3 Q And it relates to recognition proceedings commenced by
4 a foreign representative, correct?

5 A Yes.

6 Q Okay. And now let's go to Article 296, which is behind
7 Tab 16. Do you see that, sir?

8 A Yes.

9 Q And three-quarters of the way down in this article, it
10 says the foreign procedure shall be recognized as one. And
11 Roman I is what we have been calling a main foreign
12 proceeding, right?

13 A Correct.

14 Q Or it could be recognized as, two, a non-main foreign
15 proceeding, yes?

16 A Correct.

17 Q Okay. And you have opined that this case, if a Chapter
18 11 judgment were entered here, could be recognized in Mexico
19 as either a main or a non-main proceeding, correct?

20 A Yes.

21 Q Those are the two choices under Article 296, correct?

22 A Correct.

23 Q So let's turn to your opinion that this bankruptcy
24 proceeding in the U.S. could be recognized as a foreign main
25 proceeding. That's based on your conclusion, is it not,

1 that the center of main interests for the group of 35
2 alleged debtors as a whole is in the United States, not in
3 Mexico, right?

4 A Do you mind rephrasing the question, sir?

5 Q Okay. Is your conclusion that this proceeding, this
6 bankruptcy proceeding in the U.S., could be recognized as a
7 foreign main proceeding based on your conclusion that the
8 center of main interest of all of the alleged debtors as a
9 group is the United States, not Mexico?

10 A Yes.

11 Q And what Article 296 says is that a foreign proceeding
12 is recognized as a main proceeding if the COMI is in the
13 jurisdiction in which the proceeding takes place, right?

14 A Yes.

15 Q And you would agree, would you not, that a corporate
16 debtor's COMI is its principal place of business, right?

17 A I mean, center of its principal interest is an
18 immaterial concept. But in general terms, I would agree.

19 Q You would agree, would you not, that a principal -- a
20 company's principal place of business is its COMI, yes?

21 A Yes.

22 Q Okay. And here the alleged debtors are made up of 35
23 different entities which are subsidiaries and affiliates of
24 a holding company based in Mexico, right?

25 A Yes.

1 Q Okay. And that's laid out in an organizational chart
2 attached to Mr. Rodriguez's deposition that you've examined,
3 yes?

4 A Correct.

5 Q Okay. So let's look back in your exhibit book at JX
6 18, which is that organizational chart. And it's behind Tab
7 5 of the exhibit book. And I apologize for keeping going
8 back and forth.

9 A No worries.

10 Q I'll try to make this as easy for you as I can. Okay.
11 Are you there?

12 A Yes.

13 Q okay. And what JX 18 shows is the entity that is the
14 top of this organizational chart is TV Azteca S.A.B. de
15 C.V., which is the Mexican holding company, right?

16 A Right.

17 Q And the initials S.A.B. de C.V. -- I'm not going to
18 test myself, but we know it means it's a Mexican company,
19 right?

20 A It means it is a Mexican public company.

21 Q Okay. And what this shows -- by the way, you know, do
22 you not, that TV Azteca S.A.B. de C.V., the parent that's
23 orange and blue on JX 18, that was the issuer of the notes,
24 correct?

25 A Correct.

1 Q Right. And the remainder of the alleged debtors, which
2 are in green boxes, those are guarantors of the debt, right?

3 A Correct.

4 Q And there are 34 guarantors in all?

5 A Yes.

6 Q And the overwhelming majority of those 34 guarantors
7 are Mexican companies, are they not?

8 A Yes, correct.

9 Q I count 25. Does that sound right to you?

10 A About right, yes.

11 Q Okay. So 25 of the 35 companies in this group are
12 Mexican companies, right?

13 A Yes.

14 Q And a handful more were organized in different Latin
15 American or South American countries, right?

16 A Yes.

17 Q And of these 35 alleged debtors, only three are
18 incorporated in the U.S., correct?

19 A Correct.

20 Q So that's Azteca International, yes?

21 A Yes.

22 Q (indiscernible), yes?

23 A Yes.

24 Q And Azteca Sports, right?

25 A Yes.

1 Q And am I correct that in reaching your conclusion that
2 the COMI for the debtors as a whole is in the United States,
3 you did not separately analyze the COMI of each of the 35
4 alleged debtors, correct?

5 A Correct.

6 Q Even though the concurso law provides a presumption
7 that the corporate domicile of the debtor is its COMI,
8 right?

9 A Correct.

10 Q So let's look at Article 295 of the concurso law. And
11 that's behind Tab 15. Let me know when you're there.

12 A I'm here.

13 Q And the last paragraph of Article 295 says, "Unless
14 there is evidence to the contrary, it shall be assumed that
15 the corporate domicile of the merchant --" the merchant is a
16 debtor, right?

17 A Correct.

18 Q "Or its regular residence if it is the case of an
19 individual is that of the center of its main interests." So
20 the corporate domicile of a company is its COMI, yes?

21 A Yes.

22 Q And for 32 of the 35 entities, that corporate domicile
23 is not the United States, correct?

24 A Yes.

25 Q Now, you've also reviewed Mr. Rodriguez's declaration,

1 have you not?

2 A Sorry, reviewed?

3 Q Reviewed.

4 A Yes.

5 Q And in coming to your opinion, you considered Mr.
6 Rodriguez's declaration, correct?

7 A Yes. I reviewed it.

8 Q And just in case you need to look at it again, that's
9 behind Tab 11, JX 17 behind Tab 11 in the cross book. And
10 he lays out certain facts concerning the companies
11 (indiscernible), does he not?

12 A Which specific ones?

13 Q Which exhibit am I looking at?

14 A No, no. I mean I didn't understand your question.

15 Q Okay. Let me rephrase the question. I'm sorry. Mr.
16 Rodriguez lays out certain facts relating to the operations
17 of the companies in the TV Azteca group, yes?

18 A Yes.

19 Q And you do not dispute any of the facts that Mr.
20 Rodriguez recites in connection with the operations of TV
21 Azteca that are set out in JX 17, right?

22 A No.

23 Q And as a resident of Mexico City, you know that TV
24 Azteca is one of the two principal national television
25 broadcasting companies in Mexico, right?

1 A Yes.

2 Q And you know they have studios in Mexico, right?

3 A Yes.

4 Q The operate under concessions from the Mexican
5 government, correct?

6 A Yes.

7 Q He says and you don't dispute that they have thousands
8 of employees in Mexico, right?

9 A Yes.

10 Q Headquarters are in Mexico, correct?

11 A Yes.

12 Q The vast majority of the revenue is in Mexico, right?

13 A Yes.

14 Q And none of those facts change your opinion that the
15 COMI of the TV Azteca debtors as a whole is the United
16 States, not Mexico, right?

17 A That is correct.

18 Q Now, are you aware of any case decided by a Mexican
19 court in which the COMI of a group of debtors was decided as
20 a whole rather than on a company-by-company basis?

21 A Sorry, could you please rephrase the question?

22 Q Yes, okay. Your testimony here is that you can decide
23 the COMI of the alleged debtors as a group by looking at the
24 COMI of the entire group as a whole, right? Is that
25 correct?

1 A That is correct.

2 Q And you have not cited any case that supports your
3 conclusion, correct?

4 A Correct. It is a matter of first impression.

5 Q You have not cited any case, right?

6 A Correct.

7 Q Okay. And if you look at -- let's look at paragraph 40
8 of your first declaration. So that is in the cross-
9 examination book, JX 123, paragraph 40.

10 A Sorry, which -- could you please remind me what is
11 the...

12 Q The tab number? It's tab 1.

13 A Tab 1, okay. This paragraph?

14 Q Paragraph 40.

15 A One moment. This just broke.

16 Q A lot of books. I apologize.

17 A Paragraph 40?

18 Q Yes. And I'm actually interested in the sentence at
19 the beginning of Page 15 that carries over to 16. "Thus,
20 for the Chapter 11 cases." Do you see that sentence?
21 "Thus, for the Chapter 11 cases in their entirety to be
22 recognized as a foreign main proceeding, it is not necessary
23 for each and every debtor to have its center of main
24 interest, COMI, in the United States." Do you see that,
25 sir?

1 A Yes.

2 Q There's no case that supports your opinion in that
3 sentence, is there?

4 A Yes, that is correct.

5 Q That is correct. And then you say, "Rather, it is
6 enough that a subset of the debtors has its COMI in the
7 United States." Do you see that?

8 A Yes.

9 Q Again, there's no case or interpretation of the
10 concurso law that supports your conclusion.

11 A That is correct.

12 Q Now, did you analyze the operations of the non-Mexican
13 companies in connection with your COMI decision? Let me ask
14 a better question.

15 A Yes, thank you.

16 Q You were puzzled. Let me ask a better question. There
17 are three U.S. debtors, right?

18 A Correct.

19 Q And they have their place of incorporation in the
20 United States, correct?

21 A Correct.

22 Q So under Article 295, unlike the other 32, there is a
23 presumption that can be rebutted that their COMI is the
24 United States.

25 A That is correct.

1 Q Okay. Did you do a COMI analysis on a company-by-
2 company basis for each of the three U.S. debtors?

3 A No.

4 Q Now, in concluding -- so your conclusion is that these
5 three U.S. debtors would drag along the other 32 in a
6 Mexican concurso and lead a Mexican court to conclude that
7 the COMI of the entire group of 35 is in Mexico, right?

8 A Yes, correct.

9 Q And is it your testimony that you're confident more
10 likely than not that a judge in a concurso court would agree
11 with you?

12 A Now I understand perfectly what more likely than not
13 means. We did have an exchange on that. Yes. It is my
14 opinion. It is more likely than not.

15 Q So without any caselaw support, your opinion before
16 this Court is that the COMI of 32 companies that comprise
17 almost all of the revenues of the group and employ all of
18 the employees of the group and are the place of operation
19 and the center of headquarters of the (indiscernible) group,
20 all of that would be disregarded and it's more likely than
21 not that a concurso judge would say, TV Azteca U.S. Right?
22 That's your testimony?

23 A Yes, it is.

24 Q Okay. Now, your position would be the same if one
25 instead of three subsidiaries had its COMI in the U.S.,

1 right?

2 A Correct.

3 Q And your position would be the same if that one company
4 transacted a thousand dollars a year of business, right? It
5 wouldn't matter.

6 A Yes, it wouldn't matter.

7 Q You didn't consider the relative size of the business.

8 A No.

9 Q Okay. And is there any provision -- we know there's no
10 case. Can you point me to a provision of the concurso law
11 that says that the center of main interest, one, should be
12 decided as a group. Is there such a provision?

13 A A single provision? No. You have to construe the law.

14 Q Okay. And is there a single provision that says in
15 deciding the COMI for my hypothetical, one American company,
16 34 Mexican companies, that you disregard the COMI of the 34
17 and assign the COMI to the one (indiscernible). Is there
18 any provision that says that?

19 A You're only speaking about COMI?

20 Q Yes.

21 A No, there is no provision about COMI.

22 Q Well, we're talking about COMI now, right?

23 A Yes.

24 Q We're only talking about your determination of COMI.

25 Now, the provisions you did look at are Articles 15, 15 bis,

1 and 17 of the concurso law. Do I understand that correctly?

2 A Perfectly correct.

3 Q Okay. So let's look at those articles in order. So if
4 we go to the demonstrative book, with any luck it's going to
5 be in numerical order. And if we look at Tab 1, we have
6 Article 15. Now, let me know when you're there.

7 A I am here.

8 Q Okay. So this is the provision of the concurso law
9 that allows a Mexican concurso court, a bankruptcy court, to
10 consolidate the proceedings of different companies in court,
11 right?

12 A Correct.

13 Q And if we look at the second paragraph, it says the
14 Commercial bankruptcy proceedings of business organizations
15 that are part of the same business group shall be
16 consolidated, but they shall be processed and recorded
17 independently. Do you see that?

18 A Yes.

19 Q Okay. There is nothing in Article 15 that makes any
20 reference to a center of main interest for any company,
21 correct?

22 A Correct.

23 Q There is nothing in Article 15 that says that if a
24 subset of a group of companies, as you have said, has its
25 center of main interest in the United States, all of the

1 companies must be treated as if their COMI is in the United
2 States, correct?

3 A Correct.

4 Q The second provision you rely on is 15 bis, which is
5 behind Tab 2. Let me know when you're there.

6 A I am here.

7 Q Now, again, there is nothing in Article 15 bis that
8 makes any reference to the determination of COMI that's
9 required under Title 12 of concurso law, correct?

10 A Correct.

11 Q And then you also rely on Article 17, which is Tab 3.
12 Right?

13 A I'm here.

14 Q And there is nothing in Article 17 that instructs the
15 court on how to determine the center of main interests for a
16 holding company and its subsidiaries, correct?

17 A Correct.

18 Q And your testimony is -- are you disputing that the
19 COMI of the Mexican entities individually is in Mexico?

20 A I didn't make an analysis on entity-by-entity, but I am
21 not disputing that.

22 Q But you know enough about the parent, TV Azteca, to
23 agree with me that its COMI is in Mexico, correct?

24 A Correct.

25 Q And your understanding of these articles is that taken

1 together, they require a concurso court to conclude that the
2 COMI of the group must be in the United States because it
3 has a subsidiary in the United States, correct?

4 A Correct.

5 Q And it requires the concurso court in your opinion to
6 ignore the fact that the COMI of 25 of the companies,
7 including the parent, has its COMI in Mexico.

8 A Correct.

9 Q Okay. I understand your opinion. You can put that
10 aside. Let's turn actually to Article 293. And that is
11 behind Tab 13. Let me know when you're there.

12 A I am here.

13 Q Okay. And you were in court this morning. You heard
14 there was a lot of discussion already about Article 293,
15 right?

16 A Yes.

17 Q Okay. And Article 293 I think you would agree with me
18 is based on the model law, UNCITRAL Model law?

19 A Excuse me?

20 Q I'm sorry, bad question. The concurso law is based on
21 the model law.

22 A Yes, Title 12. Yes.

23 Q Title 12. But Article 293, which is part of Title 12,
24 is not part of the model law, right?

25 A Correct.

1 Q It's an extra feature of Mexican insolvency law that
2 applies to Mexican companies that have an establishment in
3 Mexico, correct?

4 A Correct.

5 Q And you are not disputing, are you, that TV Azteca, the
6 group of debtors, has an establishment in Mexico?

7 A No, I'm not disputing it.

8 Q So therefore, Article 293 would apply to any proceeding
9 involving recognition of a judgement from this court if one
10 were to occur in Mexico, right?

11 A Correct.

12 Q Now, like COMI, you did not analyze the establishment
13 of each of the 35 debtors one by one, right?

14 A Correct.

15 Q You just relied on them as a group, correct?

16 A Correct.

17 Q And your conclusion about establishment is that these
18 companies have an establishment in both Mexico and the
19 United States?

20 A Correct.

21 Q So let's just make sure we're clear about this. For
22 COMI, you could only have one COMI because it's your main or
23 principal place of business, right?

24 A Yes.

25 Q But for establishment, you can have an establishment in

1 more than one jurisdiction.

2 A Correct.

3 Q So you've agreed that all of the entities have an
4 establishment in Mexico, right?

5 A Yes.

6 Q Now let's talk about the establishment in the U.S. Did
7 you look at any facts relating to the 25 Mexican companies
8 in determining that those companies have an establishment in
9 Mexico?

10 A In Mexico?

11 Q In the United States. Thank you. No wonder you were
12 puzzled. Let me ask the question again. Did you look at
13 any of the facts relating to the 25 debtors that are
14 incorporated in Mexico in determining that they have an
15 establishment in the United States?

16 A Yes. I reviewed the points of contact with the U.S.

17 Q For all 25 of the Mexican companies?

18 A I mean, I don't know if was everything. I reviewed --
19 again, I did not review on a case-by-case basis of an
20 entity-by entity basis, but as a group.

21 Q Okay. I think that was maybe the point I was trying to
22 get at. I didn't do it that artfully. When I was trying to
23 (indiscernible), I didn't do it that artfully.

24 You didn't analyze the Mexican companies one-by-one to
25 determine if they have an establishment in the U.S., right?

1 A Correct.

2 Q And you didn't determine whether the five non-U.S.
3 South American or Latin American companies have an
4 establishment in the U.S., right?

5 A Correct.

6 Q You did that on a groupwide basis, right?

7 A Correct.

8 Q Okay. Now, if we look at Article 293, what it provides
9 is that for recognition of a foreign procedure for a debtor
10 that has an establishment in Mexico, the provisions of
11 Chapter 4 of Title 1 of this law must be observed. Do you
12 see that?

13 A Yes.

14 Q And Chapter 4 of Title 1 is the visitor or inspection.
15 I think we call it the inspection stage of the proceeding.

16 A Correct.

17 Q Okay. So under 293 for a company that has an
18 establishment in Mexico, any proceeding to recognize a non-
19 Mexican bankruptcy would start with a filing of a concurso
20 proceeding in Mexico, correct?

21 A No. It will start with a request for recognition of
22 the foreign proceeding.

23 Q Okay. And then after that, what Article 293 tells us
24 is there must be an inspection as provided in the concurso
25 law, correct?

1 A Correct.

2 Q So if this were just a domestic concurso, a debtor or a
3 group of creditors would file a petition, right? Yes?

4 A Yes.

5 Q And then it would go to the inspection stage, right?

6 A Right.

7 Q And what you're saying here is the way that a
8 recognition works is the foreign representative files a
9 request for recognition and then you go to the inspection
10 stage, right?

11 A Correct.

12 Q And there's no difference between the inspection stage
13 for a domestic insolvency and one that takes place after a
14 request for recognition of a foreign judgement, correct?

15 A Well, there is a difference.

16 Q At the inspection stage?

17 A I mean, technically speaking, yes, there is a
18 difference.

19 Q What's the difference?

20 A One, it's a fresh and new proceeding. And the other
21 one, there is a proceeding for recognizing a foreign
22 proceeding. So there is already an insolvency proceeding
23 which was (indiscernible) to a specific merchant.

24 Q But in both proceedings, the first thing that would
25 happen would be the appointment of an inspector or a

1 visitor, correct?

2 A That is correct.

3 Q And in both proceedings, domestic or recognition of a
4 foreign, the visitor is instructed to do the same things
5 under the concurso law, correct?

6 A Correct.

7 Q And Article 293 refers next to the judgement in Article
8 43. Do you see that?

9 A Yes.

10 Q And Article 43 is the judgement that a Mexican court
11 needs to make at the end of the inspection stage about
12 whether or not to admit into a concurso, declare a
13 bankruptcy, right?

14 A Yes. It is what we call the concurso ruling or the
15 concurso judgement.

16 Q Thank you. That's very helpful. And what Article 293
17 says, the judgement that Article 43 of the statute refers to
18 shall also include the declaration that the procedure or a
19 foreign procedure in question is recognized, right?

20 A Correct.

21 Q So what Article 293 is telling a concurso judge is when
22 it's a recognition proceeding, you have to enter a judgment
23 that satisfies Article 43 and also make a declaration of
24 recognition, correct?

25 A Correct.

1 Q Let's look at Article 43. And that's behind Tab 4.

2 Let me know when you're there.

3 A Sure. Yes, I am here.

4 Q Okay. So Article 43 spells out five different
5 requirements that need to be included in a concurso
6 judgement, right?

7 A Eleven I think. Or 13. Fifteen, sorry.

8 Q Fifteen. I'm only looking at the first page. Isn't
9 that terrible?

10 Okay, there are 15 specific elements that have to be in
11 a concurso judgement, correct?

12 A Correct.

13 Q And what 293 says, if this is a recognition, you need
14 to make all of those 15 rulings plus one on recognition,
15 correct?

16 A Correct.

17 Q Let's look at Section V in Article 43. It's on the
18 first page of this demonstrative. The declaration of the
19 opening of the conciliation stage, unless the bankruptcy of
20 the merchant was filed. Do you see that?

21 A Yes.

22 Q So let me just take a step back and say let's just
23 assume this was a domestic Mexican insolvency proceeding.
24 First there would be a petition filed that had to meet
25 certain requirements, right?

1 A Yes.

2 Q Then the concurso court would appoint an inspector.

3 A Correct.

4 Q And after the judge received the inspection report, he
5 or she would make this judgement of concurso in accordance
6 with Article 43 plus recognition, right?

7 A No.

8 Q I'm sorry, I confused you -- I confused myself. If
9 there's a domestic, it would just be a declaration of
10 concurso, right?

11 A Yes.

12 Q And in a domestic proceeding, the next step is what's
13 called the conciliation step, correct?

14 A Yes.

15 Q And the conciliation step is reorganization, a
16 reorganization plan?

17 A Yeah. It's a workout stage.

18 Q Okay. And your opinion, if I understand it, is that if
19 this proceeding sought recognition as a -- in Mexico and the
20 judge determined it was a foreign main proceeding, no -- it
21 would not proceed to the conciliation stage, correct?

22 A Correct.

23 Q And if the judge determined to recognize this
24 proceeding as a foreign non-main proceeding because the COMI
25 was somewhere other than the jurisdiction in which the

1 foreign proceeding took place, you would move to a
2 conciliation stage, correct?

3 A No. Unless -- because you said that the COMI is
4 somewhere else. If the COMI is found to be in Mexico and
5 therefore the judge believes that a foreign proceeding, it's
6 a foreign non-main proceeding and the Mexican proceeding is
7 a foreign-main proceeding, yes, a conciliation will occur.

8 Q All right. So let me do that again (indiscernible) the
9 confusion. All right? Your opinion is that upon
10 recognition, if there is a foreign main proceeding declared,
11 no conciliation stage. Correct?

12 A Correct.

13 Q And a foreign non-main proceeding, you go to
14 conciliation.

15 A If the Mexican proceeding is found to be the main
16 proceeding, yes.

17 Q That's correct. And there is nothing in Article 43, is
18 there, that says that a judgement that has to be entered
19 under Article 293 shall not declare the opening of
20 conciliation stage, correct?

21 A Could you please repeat the question?

22 Q Yes. So Article 293 says that if you have an
23 establishment in Mexico, the judge has to enter -- upon
24 recognition, the judge has to enter a judgement that
25 satisfies the requirements of Article 43, right?

1 A I mean, my -- let me look at the law.

2 Q Yes, please.

3 A But I think that is not what Article 293 says.

4 Q Okay. Let's look at the exact words. We looked at the
5 first paragraph. That's the inspection stage, right?

6 A Yes, second paragraph.

7 Q 293, which applies to any debtor that has an
8 establishment in Mexico, which includes this group of
9 debtors, right?

10 A Yes.

11 Q Okay.

12 A I am here. Sorry.

13 Q Okay. No worries. The judgment that Article 43 of
14 this statute refers to shall also include the declaration
15 that the procedure or foreign procedure in question is
16 recognized. Do you see that?

17 A Yes.

18 Q So what Article 293 is saying is at the conclusion of
19 the inspection stage in a recognition proceeding, not only
20 do you have to satisfy the 15 elements of Article 43, you
21 also have to include this declaration of recognition,
22 correct?

23 A No.

24 Q Well, let me ask you this. What provision in Article
25 43 or anywhere else draws a distinction between what a

1 concurso judge is supposed to do at the conclusion of the
2 inspection stage between a foreign main proceeding and a
3 foreign non-main proceeding?

4 A Second paragraph of Article 293 does not say that the
5 concurso judgement shall satisfy all 15 requirements. It
6 only says the judgement that Article 43 of this statute
7 refers to shall also include the declaration that the
8 foreign procedure in question is recognized.

9 So in other words, it is making reference to the
10 judgement of Article 43. When you decide -- when the judge
11 decides what are going to be the decisions made in the
12 concurso judgment or in the concurso ruling, the judge will
13 have to weigh in whether it is a foreign main proceeding,
14 the one recognized, or a foreign main proceeding, the one
15 recognized. Because according to the principles, for
16 example, of Article 1, one of the principles is speediness
17 and efficient procedure on the one hand.

18 And on the second hand, according to Article 285, you
19 have to satisfy the rules of construction, Title 12. You
20 have to construe this title considering its international
21 origin.

22 So if you put all that together, it is obviously to me
23 that there is no conciliation needed because there has
24 already a foreign main proceeding.

25 Q It may be obvious to you, but nothing in Article 43

1 draws a distinction between a judgement issued in a
2 proceeding for recognition of a main foreign proceeding or a
3 non-main foreign proceeding, correct?

4 A Because Article 43 does not deal with foreign
5 proceedings or foreign non-main proceedings. It deals with
6 domestic proceedings.

7 Q Which are followed upon recognition. That's what we've
8 been talking about for the last 20 minutes, right?

9 A No.

10 Q Procedures are followed.

11 A No.

12 Q Okay. Is there anything Article 293 that instructs the
13 court to make a different determination for a company that
14 has an establishment in Mexico, whether it's main or non-
15 main?

16 A Article 293 leaves open for the court to make that
17 determination. If you look at Article 296, the judge has
18 two possibilities; to recognize it as a foreign main
19 proceeding or as a foreign non-main proceeding. If you look
20 at second paragraph of Article 293, there is nothing in
21 there that says the judgement of Article 43 shall contain
22 all the requirements of Article 43.

23 Q So your reading that says the judgment of Article 43 of
24 this statute shall also include a declaration is that a
25 judge is free to skip any of the steps in an Article 43

1 judgement in a recognition proceeding, right?

2 A I'm not really sure that I am following your question.

3 Q Okay. Is there any case you can point me to that draws
4 a distinction on the recognition between the main proceeding
5 and the foreign non-main proceeding?

6 A No.

7 Q Is there anything in the text of 293 that refers to a
8 main proceeding or a non-main proceeding?

9 A No.

10 Q Is there anything in Article 43 that instructs the
11 judge to write a different concurso judgement in a foreign
12 main proceeding or a foreign non-main proceeding?

13 A No.

14 Q Okay. So let's for a moment think about this as a
15 foreign non-main proceeding. So the hypothetical I'm
16 offering you is that at the end of the inspection stage, the
17 concurso judge finds that the debtor does not have a center
18 of main interest in the United States and therefore it's a
19 foreign non-main proceeding. Okay?

20 A Understood.

21 Q If it's a foreign non-main proceeding, the next step
22 after that judgement is a conciliation stage, correct?

23 A Correct.

24 Q And the conciliation stage that a judge follows upon
25 recognizing a foreign non-main proceeding is procedurally

1 the same as a domestic concurso filed in the first instance,
2 right?

3 A Correct.

4 Q And if you look at your reply declaration, which is
5 behind Tab 2, it's JX 130, Paragraph 47. This is where
6 discussion of the back and forth between you and Professor
7 Mejia with respect to Article 293. Do you see that?

8 A Yes.

9 Q And you say in Paragraph 37, "Mejia is correct that
10 Article 293 provides that a full concurso needs to be
11 initiated for recognizing any foreign proceeding of a
12 company that has an establishment in Mexico. Do you see
13 that, sir?

14 A Yes.

15 Q And that was a truthful statement, right?

16 A Yes.

17 Q You can put that to one side. Now, when you get to the
18 reconciliation stage, a conciliator is appointed, right?

19 A We continue to be in the non...

20 Q We're in the non-main world now. Leaving main behind
21 for now. Okay?

22 A Okay.

23 Q Unless I tell you otherwise --

24 A We're continuing --

25 Q -- we're still in -- we've recognized the non-main

1 proceeding for a company with an establishment in Mexico.

2 A And its COMI.

3 Q Pardon?

4 A Sorry.

5 Q No, an establishment in Mexico. Because 293 applies.
6 Right?

7 A But it is a non-main proceeding. A foreign non-main
8 proceeding.

9 Q Yes, a non-main proceeding.

10 A And I assume a main proceeding in Mexico. So the COMI
11 -- the Mexican company does not only have an establishment,
12 but also COMI.

13 Q Is that your assumption?

14 A No. I mean, I'm asking you.

15 Q I'm just asking you -- well, what 296 says, you have to
16 recognize either a main proceeding or a foreign non-main
17 proceeding, right?

18 A Correct.

19 Q And now I'm asking if you assume what the court has
20 concluded is that it's a foreign non-main proceeding, right?

21 A Yes. For that example, it is one important fact is
22 what is the determination of the Mexican court regarding its
23 jurisdiction. Because it is the possibility -- it is also a
24 possibility that the concurso court finds that the foreign
25 main proceeding is a non-main proceeding. The Mexican

1 proceeding is also a non-main proceeding. And a foreign
2 proceeding is somewhere else.

3 Q Okay. But if it concludes that the U.S. proceeding is
4 a foreign non-main proceeding, you go to the conciliation
5 stage in that proceeding in Mexico, correct?

6 A Only if the Mexican court finds that Mexico is the
7 foreign main proceeding.

8 Q Where is that provision in the law?

9 A I mean, it is -- again, the principles of Article 293
10 and 296.

11 Q It's not in 293, is it?

12 A Those are the principles. Because that is --

13 Q I'm just asking you if -- let's go to 296. 296 says
14 the foreign procedure shall be recognized, down at the
15 bottom. One is a main foreign proceeding or a non-main
16 foreign proceeding, right?

17 A Right.

18 Q Does 296 say that the recognition of a foreign non-main
19 proceeding requires a main proceeding to be occurring in
20 Mexico?

21 A No.

22 Q Does 293 say that?

23 A No.

24 Q So if there is a foreign non-main proceeding which is
25 past the inspection stage, like recognition, it moves to

1 conciliation, correct?

2 A If Mexico finds to be the COMI, yes.

3 Q Okay, I'll take that. So if the Mexican court finds
4 that TV Azteca, the second-largest broadcaster in Mexico,
5 has a center of main interest in Mexico as opposed to some
6 other country, then that's the judgement we're looking for,
7 right?

8 A Yes.

9 Q Okay. So assume that. The conciliation stage is
10 overseen by a conciliator appointed by the court or by the
11 institute?

12 A Depends.

13 Q Okay. And just explain for us what the institute is.
14 Because it's a slightly different procedure.

15 A I mean, I don't know how to translate that into
16 English. But it is Institute (indiscernible)
17 telecommunications. It's Federal Institute for Telecom.

18 Q And sometimes it appoints the conciliator and sometimes
19 the conciliator is appointed by the concurso judge?

20 A By the (indiscernible).

21 Q Okay. Okay. But for a company like TV Azteca that has
22 concessions from the Mexican government, from the
23 telecommunications commission, one other party plays a role
24 in the appointment of conciliator, right?

25 A You're talking about domestic (indiscernible) entity?

1 Q I'm talking about TV Azteca, the broadcaster that has a
2 business that depends upon concessions granted by the
3 Mexican government.

4 A My understanding is it is two entities other than TV
5 Azteca, the holding company, that actually hold those
6 concessions.

7 Q Okay. But in your judgement, everything can be dealt
8 with as a group, right?

9 A Correct.

10 Q Okay. So they're in the group. And if they're in the
11 group, there's a different rule for conciliation in Mexico,
12 correct?

13 A A different rule?

14 Q Yes.

15 A I mean, the rule is the same. Only the person who
16 appoints the conciliator is different.

17 Q Okay. Let's look at Article 240, which is behind Tab
18 6. This article refers to debtors that operate businesses
19 pursuant to a government concession, right?

20 A Yes.

21 Q And the grantor is the concessionaire, correct?

22 A Yes.

23 Q Okay. And here you know that the grantor is the IFT,
24 which is the telecommunications commission, right?

25 A Yes.

1 Q And what 240 provides is the granting authority shall
2 propose to the judge all that is relative to the
3 appointment, removal, and substitution of the bankruptcy
4 conciliator and the liquidator that participate in the
5 commercial bankruptcies that this chapter refers to as well
6 as supervising the activities of the same. Right?

7 A Yes.

8 Q Okay. So in our hypothetical, the COMI is in Mexico.
9 Judgment has been entered for recognizing this proceeding as
10 a foreign non-main proceeding and we're at the conciliation
11 stage. The IFT must be (indiscernible), right?

12 A Must appoint, must propose a judge, the appointment,
13 removal, or substitution.

14 Q And supervise the activities of the conciliator, right?

15 A Correct.

16 Q So if this proceeding were filed in Mexico, the
17 government telecommunications commission would have the
18 right to oversee the insolvency proceeding, correct?

19 A No. To oversee the activities --

20 Q Of the conciliator.

21 A -- of the conciliator.

22 Q I take your amendment. So let me ask again. If this
23 were in Mexico, the IFT would oversee the activities of the
24 conciliator, right?

25 A Yes.

1 Q And the conciliation phase in Mexico that would occur
2 after recognition of a non-main proceeding would occur first
3 for a period of 185 days?

4 A Yes.

5 Q With two possible 90-day extensions.

6 A Yes.

7 Q So in a recognition proceeding involving a company with
8 its COMI in Mexico, debtors with their COMI in Mexico and
9 recognition of a non-main proceeding, the conciliation stage
10 in Mexico would take a year, right? Could take a year.

11 A Yes.

12 Q Even if there had been a plan approved in the foreign
13 proceeding, correct?

14 A Yes.

15 Q And are the rules different in Mexico with respect to
16 the concurso for a voluntary or involuntary proceeding with
17 respect to conciliation?

18 A With respect to conciliation, no.

19 Q So whether a voluntary proceeding is filed in Mexico or
20 an involuntary proceeding is filed in Mexico, first to the
21 inspection stage, right?

22 A Yes.

23 Q Then you go to the conciliation stage, yes?

24 A Yes.

25 Q And if the conciliation stage, you go to the

1 liquidation stage, correct?

2 A Yes.

3 Q Thank you. Now let's look at Section 283 of the
4 concurso law. And that's behind Tab 11. Let me know when
5 you're there.

6 A Which tab? Sorry.

7 Q Tab 11, Section 283.

8 A Thank you. I am here.

9 Q Are you with me?

10 A Yes.

11 Q Okay. 283 is part of Title 12, the recognition
12 provisions, correct?

13 A Yes.

14 Q And 283 says, "None of what is set forth in this title
15 --" Title 12, yes?

16 A Yes.

17 Q "-- may be interpreted in a sense that is contrary to
18 what is set forth in titles 1, to 11 and 13 of this law of
19 in any other way that is contrary to fundamental principles
20 of law that rule in the Mexican Republic." Do you see that,
21 sir?

22 A Yes.

23 Q And then it goes on to say, "Consequently, the judge,
24 the Institute, the inspector, the bankruptcy conciliator, or
25 the liquidator shall refuse to adopt a measure when it is

1 contrary to what is set forth in such titles or when it may
2 violate the aforementioned principles." Do you see that?

3 A Yes.

4 Q So what 283 tells us is that in a proceeding that
5 starts with recognition, the concurso court must act in
6 accordance with the entire concurso law, right?

7 A Not really sure I understand your question.

8 Q Title 1 to 11, and 13 is the entire concurso law other
9 than recognition, is it not? How many titles are there in
10 the concurso law?

11 A Fourteen.

12 Q Fourteen. What's Title 14?

13 A Prepack.

14 Q Okay. So other than Title 14, what this says is in a
15 recognition proceeding, the recognition must be -- the judge
16 must interpret in a way that is consistent with the rest of
17 the concurso law other than the prepack title, yes?

18 A Correct.

19 Q And also must be consistent with Mexican public policy,
20 right?

21 A Yes. The interpretation.

22 Q Interpretation. Now, in our hypothetical, COMI in
23 Mexico, foreign non-main proceeding recognized, in the
24 conciliation stage, a plan could not be adopted without the
25 approval of TV Azteca, correct?

1 A In our hypothetical?

2 Q Yes.

3 A Correct.

4 Q And just so we all know exactly what we're talking
5 about, that's what Article 147 provides, right?

6 A Yes.

7 Q Article 157, which is behind Tab 5 -- and I think Mr.
8 Mejan went through this with Mr. Clareman -- the composition
9 deeds that must be subscribed with the merchant means a plan
10 of reorganization must be approved by the debtor, correct?

11 A Yes.

12 Q And in a conciliation stage involving a concession -- a
13 company that holds concessions such as TV Azteca, one party
14 gets approval rights, right?

15 A Excuse me?

16 Q The IFT would have to approve as well, correct?

17 A No.

18 Q Okay. Let's look at Article 242. That's behind Tab 8.
19 Any agreement proposed in terms of Title 5 -- Title 5 is the
20 conciliation stage, right?

21 A Correct.

22 Q "Any agreement proposed in terms of Title 5 of this law
23 must be notified to the granting authority." Here that
24 would be the IFT, correct?

25 A Correct.

1 Q "Which may veto it in a term provided in Article 162 of
2 this law." Correct?

3 A Correct.

4 Q So if a plan is not approved by TV Azteca, the
5 conciliation stage turns into a liquidation, correct?

6 A Correct.

7 Q And even if it is approved by TV Azteca, the
8 telecommunications authority can veto it, correct?

9 A Correct.

10 Q Okay. Now, am I understanding your opinions correctly,
11 Mr. Guerra, that you have opined that even if the concurso
12 court would not grant recognition of the judgement from this
13 Court and this proceeding, there could be other grounds for
14 enforcing in Mexico?

15 A Other grounds?

16 Q Oher vehicles, other...

17 A Yes.

18 Q Yes, okay. And let's just talk about enforcement for a
19 minute.

20 A Sure.

21 Q Am I correct that a Mexican court will not enforce a
22 judgement of a U.S. court that violates Mexican law or
23 Mexican public policy?

24 A Correct.

25 Q And am I correct that a federal bankruptcy court in

1 Mexico would not enforce a judgment of a U.S. bankruptcy
2 court that violates Mexican law or Mexican public policy?

3 A Correct.

4 Q Now, your opinion -- let's look at your supplemental
5 declaration, which is behind Tab 2 in your book, the cross
6 book. I apologize for going back and forth.

7 A Don't worry.

8 Q And it's JX 130. And it's Paragraph 62. Let me know
9 when you're there.

10 A I am here.

11 Q And in the third sentence of Paragraph 62, you say,
12 "However, the petitioning creditors would only need to seek
13 recognition and/or enforcement under the commercial code and
14 federal civil proceedings code in the event they are unable
15 to obtain recognition under Title 12." Do you see that,
16 sir?

17 A Yes.

18 Q So your hypothesis is if a judgement is issued by this
19 Court which a Mexican bankruptcy court would not enforce, an
20 alternative means would exist for enforcement in Mexico.

21 A I think that the word I use is recognized.

22 Q Okay. So if it were not recognized -- actually, that's
23 a good question. When we talk about recognition, the
24 language of Article 296 says that Mexican courts shall
25 recognize.

1 A Correct.

2 Q Is it your opinion that a Mexican court doesn't have
3 the authority to refuse to recognize a foreign proceeding?

4 A No. If the conditions are met, it is not -- I mean, it
5 shall be recognized.

6 Q But if a Mexican court concludes that the conditions
7 are not met, say that the U.S. bankruptcy judge violates
8 public policy, it wouldn't recognize it, would it?

9 A I think we're talking about different things.

10 Q Okay. Help me out here.

11 A For recognition under 296, the only thing that has to
12 be complied with are the four requirements of the first
13 paragraph of Article 296. For enforcement, yes.

14 Q Okay.

15 A The foreign relief that is sought to be enforced in
16 Mexico has not to contradict Mexican law or Mexican public
17 policy.

18 Q Okay. So let me try to clean up what I asked you
19 before. If a Mexican court recognized the judgement from
20 this court as say a foreign non-main proceeding, it could
21 still refuse to enforce that judgement if it concluded that
22 the judgement violated Mexican law or Mexican public policy,
23 correct?

24 A Correct.

25 Q And if instead what happened, as you posit in Paragraph

1 62 of your supplemental declaration, JX 130, a Mexican
2 bankruptcy court did not grant recognition, enforcement
3 could be sought in, say, under the commercial code or
4 federal civil procedures, right?

5 A If the recognition was denied.

6 Q Right.

7 A Of the foreign proceeding.

8 Q Right. But each of those courts would not enforce if
9 it determined that the judgment for which enforcement was
10 sought violated Mexican law or Mexican public policy,
11 correct?

12 A Correct.

13 Q And violations of Mexican law could include violations
14 of the concurso law, correct?

15 A Depends.

16 Q You're not saying they couldn't include it, are you?

17 A No, I'm not saying it couldn't.

18 Q It's a possibility that a Mexican court can ask to
19 enforce a judgment that was not recognized by the concurso
20 court could refuse to enforce on the ground that the
21 judgement violated provisions of the concurso law, right?

22 A It's possible.

23 Q Including Article 157, right?

24 A I don't think so.

25 Q But it's possible, right?

1 A But it's possible. It will be if the judge decides to
2 refuse recognition because no conciliator was appointed in
3 the foreign proceeding.

4 Q Now, if enforcement is sought in one of these other
5 courts, the judgment here has to be a final, non-appealable
6 judgement, correct?

7 A Correct.

8 Q And if enforcement is sought under the commercial code,
9 one of the two possibilities, the commercial code does not
10 permit enforcement of a judgement that arises from an in rem
11 action, correct?

12 A Correct.

13 Q So if the Mexican commercial court decided that this
14 bankruptcy court was conducting in an in rem proceeding, it
15 would not enforce it, correct?

16 A If it was an in rem action, that is correct.

17 Q But under the concurso law, the only way to recognize a
18 judgement is under Article 296, correct?

19 A It does not provide it is exclusive.

20 Q How else can you enforce a judgement under the concurso
21 law?

22 A Maybe I did not understand your question. Could you
23 please repeat it?

24 Q Let me ask the question again. I might have confused
25 you. 296, which has a name in -- foreign main and foreign

1 non-main proceeding is the only provision of the concurso
2 law that governs recognition of a foreign bankruptcy
3 judgement proceeding, right?

4 A Yes.

5 Q Okay. Now, let me turn to what we've been calling the
6 injunctions in this case, right?

7 A Okay.

8 Q The ones in Mexico that TV Azteca (indiscernible),
9 correct?

10 A Okay.

11 Q There are two of them, right?

12 A Correct.

13 Q One from July of 2022, right?

14 A I don't remember the exact dates. But if you tell me
15 the judge, that would be easier.

16 Q Well, one is from the Ninth Civil Court, and one is
17 from the 63rd, correct?

18 A Yes. I understand the 63 to be the first and the Ninth
19 Civil Court to be the second.

20 Q Okay. And the 63rd is what I think Mr. Qureshi in his
21 opening referred to as the (indiscernible), right?

22 A Yes.

23 Q Okay. Now, the injunction from the Ninth Court has not
24 been served on any of the petitioning creditors, correct?

25 A That is my understanding.

1 Q Now, TV Azteca to your understanding obtained ex parte
2 orders from these two courts, correct?

3 A Correct.

4 Q And the procedures of those courts provide for
5 injunctions to maintain the status quo to be (indiscernible)
6 an ex parte basis, do they not?

7 A I understand so.

8 Q Okay. So when Mr. Qureshi referred to ex parte
9 injunctions, it's because Mexican procedure allows a party
10 such as TV Azteca to seek such an injunction ex part, right?

11 A Yes.

12 Q And when one tries to serve a judgement on a foreign
13 party, there are very specific procedures in Mexican law for
14 service of process, correct?

15 A Yes.

16 Q Through the Hague Convention, correct?

17 A When the Defendant has its domicile abroad, yes.

18 Q Correct. And what TV Azteca did here with respect to
19 the COVID injunction is it sought to serve the injunctions
20 on the petitioning creditors in accordance with the
21 procedures set out in the Hague Convention because the
22 petitioning creditors do not have a domicile in Mexico,
23 correct?

24 A I assume. I did not review that specific information
25 on that TV Azteca is doing.

1 Q And have you been involved in service of process on
2 companies that are not in Mexico?

3 A Yes.

4 Q It takes a long time to get to the Hague, doesn't it?

5 A Four months, six months.

6 Q Four to six months. Okay. And with respect to the
7 other injunction, the one from the Ninth Civil Court,
8 service to your understanding has not been effective,
9 correct?

10 A To the best of my understanding as of today, it hasn't
11 been effectuated.

12 Q Now, when a party like TV Azteca serves process under
13 the Hague convention, who is responsible for making sure the
14 foreign party receives service?

15 A Could you please rephrase the question?

16 Q What is the procedure? TV Azteca files appears with
17 what court or what entity?

18 A The process for serving process on a foreign entity?

19 Q Yes.

20 A Well, you file the complaint. The complaint is
21 admitted. The judge orders service of process through the
22 Hague Convention. The judge issues a letter of authority.
23 The letter of authority is provided either to official
24 channels. It is the Ministry of Exterior or to the party
25 that sought the injunction. And the next step is for either

1 the party who obtained the injunction or the Ministry of
2 Exterior to send the letter of authority to the agency
3 appointed for that effect in the United States. And the
4 United States office will then -- process server will serve
5 process on the defendant.

6 Q Do you have any information to suggest that TV Azteca
7 did not follow that procedure with respect to either
8 injunction here?

9 A As I explained, I don't have any information on what TV
10 Azteca did or did not do.

11 Q And the second injunction that hasn't been served on
12 the parties is not binding on those parties under Mexican
13 law until service is effected, correct?

14 A Just for -- to understand, the second injunction you
15 mean --

16 Q The non-COVID injunction.

17 A The non-COVID injunction.

18 Q The Ninth --

19 A The Ninth Civil Court.

20 Q The Ninth Civil Court.

21 A Yes. Could you please repeat your question?

22 Q Yes. Until service is effected through the Hague
23 Convention, that injunction is not binding on the parties
24 for which the injunctive relief was sought, correct?

25 A No. Judicial orders in Mexico are binding from the

1 moment they are entered into.

2 Q What's the consequences of them not being served?

3 A The legal remedy is to contest, to challenge. Or the
4 assumptions to disobey the order are not (indiscernible).

5 Q So (indiscernible) in the enforcement proceedings with
6 respect to the injunctions for which service has been
7 completed, correct?

8 A Again, it depends.

9 Q It depends. Okay.

10 A Because if the party has actual knowledge, that would
11 be a different scenario.

12 Q Is there any case in which you are aware of that you
13 can cite to us in which a foreign party which has knowledge
14 of but has not been served with an injunction had been held
15 accountable for contempt or other sanctions in the Mexican
16 court?

17 A No.

18 Q Now, one of the things that you did in your
19 supplemental declaration is you attached a copy of an
20 injunction from a non-concurso court enjoining the filing of
21 a bankruptcy proceeding, correct?

22 A Yes.

23 Q And that's JX 30, which is Tab 9 in your cross book.

24 And I'm going to direct you -- I'm sorry, I steered you to
25 the wrong exhibit. Withdraw.

1 JX 161, which is Tab 10 in your cross book, that's the
2 injunction in the (indiscernible) case that you attached to
3 your supplemental declaration, correct?

4 A Correct.

5 Q Okay. And if we look at JX 161, Page 25 of 28 of the
6 translation -- it's actually highlighted in yellow. Do you
7 see that?

8 A Yes.

9 Q Did you provide that highlighting?

10 A Yes.

11 Q Okay. And it enjoins on a preliminary basis an entity
12 from filing a bankruptcy proceeding, correct?

13 A Yes.

14 Q Okay. And the injunctions, either the one that was
15 served or the one that wasn't served, that were obtained by
16 TV Azteca could not specifically enjoin bankruptcy
17 proceedings, correct?

18 A No, it does not contain a specific language.

19 Q Thank you, Mr. Guerra.

20 MR. COHEN: I pass the witness.

21 THE COURT: Okay. Mr. Guerra, this is now when I
22 get my questions.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. So I'm sorry if I ask
25 anything that seems -- but I'll appreciate your help in

1 understanding the analysis. Okay.

2 So first I guess explain why your interpretation
3 of establishment doesn't seem to require that there be
4 employees or offices or other locations in the jurisdiction.

5 THE WITNESS: I believe this was a recognition by
6 the legislative power that a business operation can take
7 many forms and could be performing in many different
8 circumstances. So as oppose of trying to find a restrictive
9 language, the legislative power found compelling to include
10 -- to use a broader language, something that could include
11 anything.

12 THE COURT: Okay. And is there any precedent from
13 the concurso court regarding what an establishment is? Have
14 they rendered any decisions in the last two years since the
15 court was established about this?

16 THE WITNESS: No, Your Honor, I am not aware of
17 any.

18 THE COURT: That's fine. In your declaration, you
19 mention Article 307 of the -- pardon me for using this
20 phrase -- the LCM.

21 THE WITNESS: Is perfect.

22 THE COURT: Requiring that there be a proceeding
23 in Mexico. Does that require that there be a proceeding in
24 Mexico and a foreign proceeding?

25 THE WITNESS: Yes. And my understanding of this

1 set of circumstances is that upon recognition of a foreign
2 proceeding, there will be a proceeding in Mexico. So this
3 is where I believe Article 307, Section 2 applies to our
4 case.

5 THE COURT: And so I think what you're saying is
6 you're going to have a recognition proceeding then in the
7 concurso court. Then you're going to obviously, if it's a -
8 - I think we've discussed if it involves an establishment of
9 a Mexican party, you're also going to have to file an actual
10 concurso. And then you're going to have a Chapter 11
11 proceeding that we already had. Is that right, that we'd
12 have that type of proceeding, a recognition proceeding
13 followed by a regular concurso if it was a non-main type of
14 recognition?

15 THE WITNESS: I'm not really sure I understand
16 your question, Your Honor. Sorry.

17 THE COURT: Sure. Let me go through this
18 carefully. Sorry. Let me find my statutes.

19 So I think what you've explained in your testimony
20 is that basically if there is a foreign non-main recognition
21 by the court, you'll have had to apply for that recognition
22 and the Mexican court will have to decide that it's a
23 foreign non-main circumstance. And right now I'm assuming
24 in my hypothetical that we have these Chapter 11 proceedings
25 there and that's what the Mexican court does. So we've had

1 a recognition proceeding that was applied for before the
2 concurso courts, and they've had to decide that they're
3 recognized. You've already got the Chapter 11 proceedings
4 that have been pending here, just hypothetically.

5 Then my understanding is you would also have the
6 regular concurso process because if there is an
7 establishment -- if it turns out that the court determines
8 there is establishment in Mexico, you would also have the
9 regular concurso process going forward. Is that right?

10 THE WITNESS: No. What I meant I believe is
11 Paragraph 47 of my supplemental declaration, the one we have
12 discussed, Mr. Cohen and I.

13 THE COURT: I think that's number two in the book.

14 THE WITNESS: It is where I make the statement.
15 And it is correct that Article 203 provides that a full
16 concurso needs to be initiated for recognizing any foreign
17 proceeding of a company that has an establishment in Mexico.

18 What I understand that to mean when making
19 (indiscernible) of my own is that an inspection has to
20 happen. Because that is for the recognition. So in other
21 words, it's before the judgment of Article 43 happens.

22 THE COURT: Right. But then --

23 THE WITNESS: So there will not be -- let me put
24 it this way, there will not be a recognizing proceeding in
25 Mexico and a concurso proceeding in Mexico. There will be a

1 recognizing proceeding which will have to carry out an
2 inspection visit. And then the judge will make the
3 determination. And depending on what the determination
4 makes the judge, the case will continue either as a main or
5 as a non-main proceeding.

6 THE COURT: Okay. I understand. But also you
7 might continue along the concurso path depending on what
8 happens, right? Because...

9 THE WITNESS: Yes. Yes.

10 THE COURT: Okay. I'm just making sure I
11 understand that. All right. Is there any precedent where
12 the concurso court has enforced a plan of reorganization or
13 a scheme approved by a foreign court where the debtors
14 didn't agree to the scheme or the plan?

15 THE WITNESS: No.

16 THE COURT: All right. Let's see. All right. So
17 now another sort of hypothetical here. Oh, another question
18 for you. Has any foreign restructuring plan or scheme been
19 enforced by the Mexican courts in Mexico under the two
20 sections that you were just speaking about before, which
21 were Article 1347A of the commercial code and Article 5571
22 of the federal civil proceedings code since the passage of
23 the LCM?

24 THE WITNESS: No.

25 THE COURT: Okay. Again, this is a hypothetical a

1 little bit. And, sorry, it deals a little bit with what
2 might happen to me, but I need to get a sense of what might
3 happen on your side of -- you know, in Mexico if something
4 happened here. So if I were to deny this motion to dismiss,
5 the debtors under our bankruptcy code -- which I realize
6 you're not a U.S. law expert, so you have to take what I'm
7 saying as face value here -- would be required to make
8 certain filings and take certain actions as a fiduciary. If
9 the debtors refuse to do so, this court might have to take
10 other actions here. We might have to, example, appoint a
11 Chapter 11 trustee. This happens when there is an
12 involuntary petition sometimes and the person is not
13 cooperative. Sometimes that does occur. Would a Mexican
14 court enforce an order of this court which removed existing
15 management and the boards of directors of being charge of
16 operations? Because that's in essence what a Chapter 11
17 trustee order does. It supplants. The Chapter 11 trustee
18 supplants the management of the board in their operations.

19 THE WITNESS: Yes. It is something that the
20 Mexican court will definitely do. Because it is within the
21 rights of the foreign representative to request the
22 enforcement of any relief granted in the foreign proceeding.

23 THE COURT: Are you aware of any time you've seen
24 that happen by the concurso court or in a concurso situation
25 or a foreign main, foreign non-main recognition proceeding?

1 THE WITNESS: No. To the best -- no, Your Honor.
2 Unfortunately, to the best of my understanding, there has
3 never been a foreign proceeding recognized in Mexico other
4 than (indiscernible), which is...

5 THE COURT: Yeah, understood. Everyone cites to
6 that case. Okay. All right. Going back to the insolvency
7 test. Because obviously one of the discussions has been
8 whether really there is the ability of the petitioning
9 creditors to commence the involuntary concurso and what
10 would happen if they did. So what is your opinion about
11 what are considered to be outstanding liabilities for the
12 purposes of the insolvency test under the concurso law?

13 THE WITNESS: In my opinion it's all debts and
14 obligations that are due and payable 30 days before the
15 filing of the involuntary petition or the voluntary
16 petition.

17 THE COURT: Okay. And in your opinion, what do
18 you consider to be liquid asset for purposes of the
19 insolvency test?

20 THE WITNESS: Cash, public shares or shares held
21 in public companies, and receivables that have to be paid in
22 the 90 following days.

23 THE COURT: Okay. Do you have any opinion sitting
24 here today as to whether the insolvency test would be met?

25 THE WITNESS: Excuse me?

1 THE COURT: I said do you have any opinion sitting
2 here today whether the insolvency test would be met?

3 THE WITNESS: I personally don't believe it will
4 be met because the injunctions as I understand them prevent
5 the debt to be declared in default and prevent
6 (indiscernible) to be due and payable. Therefore, at the
7 time of the filing, either a voluntary or involuntary
8 filing, it will be hard to meet the first requirement.t

9 THE COURT: That's where I was going to go next
10 with that. That's what I was interested in. And I
11 obviously asked Mr. Mejan these questions, too. It seems to
12 me that the I guess what I'll describe as the first
13 injunction in time, it seems like there's a difference of
14 opinion, the one that hasn't been served yet, but was filed
15 in July on an ex parte basis, but no service has been
16 effectuated. It seems like there's a dispute over both
17 whether that would be enforceable -- I think you're saying
18 that the parties might be bound by it. And I think --
19 meaning the petitioning creditors even if they haven't been
20 served (indiscernible). Right? And the alleged debtor's
21 expert, Professor Mejan, saying no, that they wouldn't be
22 bound by it at this point. And then I think there also
23 seems to be a difference of opinion from your testimony as
24 to whether or not ultimately even if it had been served in a
25 case for example of the -- what I'll call, using Mr.

1 Qureshi's words, the COVID injunction -- with respect to the
2 COVID injunction, which has actually been served on some of
3 the parties, whether that would then include parties from --
4 you know, would be interpreted as having precluded that
5 acceleration. The reason I'm asking that question is the
6 acceleration notice is given in August. This COVID
7 injunction is a September injunction. It's true there was a
8 July injunction. So whether that applies or not makes a
9 difference it seems to me because if it does, it might mean
10 that it would preclude it. If it doesn't, because it wasn't
11 enforceable, going with the alleged debtor's sort of
12 arguments that it wouldn't be enforceable, then maybe the
13 September injunction would be enforceable now that it's been
14 served. That's the argument.

15 You might argue, if I understand your testimony,
16 that it would have been enforceable when it was issued. But
17 that still would have been September. And the acceleration
18 notice was given in August. So you can understand why it's
19 a little confusing for me trying to figure out what kind of
20 argument somebody is going to make.

21 I understand of course having read the papers and
22 the injunction proceedings there are certainly positions
23 taken by the parties -- including in the one that hasn't
24 been served yet, because I've read the papers on that --
25 that would certainly say that that acceleration wasn't valid

1 and disputed. And so I guess I would be interested in your
2 view about what the concurso court is likely to do with this
3 if it ended up in front of them. Because it seems to me
4 that there's a real issue about whether you could or could
5 not make the argument that that principal has been
6 accelerated or not depending on whether you think the
7 injunction is effective, the first one, or not. I think
8 it's harder with the second one because the acceleration
9 happened before the second one. What's your thought on
10 that?

11 THE WITNESS: I mean, it's a very good question.
12 And I would like to talk a little bit about personal
13 experience.

14 THE COURT: Sure.

15 THE WITNESS: I remember having a case back in
16 2003 where there was a shareholder meeting. That
17 shareholder meeting was -- sorry, a board meeting. And
18 there was a resolution extending the board meeting. Between
19 the actual issuance of the injunction and the service of
20 process, one month elapsed. And some actions were performed
21 during that month. We sought the (indiscernible) of the
22 specific action that was taken within that month. And the
23 court found that the directors that took the specific action
24 were not held liable, (indiscernible) consider that this
25 contract violated the injunction and as a consequence of

1 that declared the nullity of the contract.

2 That is in my experience and that is very much the
3 (indiscernible) of what I am saying, that Mexican orders,
4 just like any judicial order in the world, becomes effective
5 the moment it is entered into. The service of process of
6 the order, it only has effects -- for the persons to
7 exercise the rights, they have to challenge or to context or
8 to be sanctioned for violating the injunction.

9 Now, when I see this set of circumstances, the
10 injunctions in my view are not only binding on the
11 defendants, they are also binding in the plaintiffs. In
12 other words, from the moment injunctions were granted, those
13 injunctions had an impact in the plaintiff's books and
14 records, and they have to reassert the notes as not
15 accelerated.

16 So when the official examiner will be conducting
17 his report, the official examiner or the inspector or the
18 visitor, will be reviewing the plaintiff's or the debtor's
19 books and records, which most likely will reflect that the
20 notes were not accelerated. So regardless of the injunction
21 being served or not on the defendants of those cases, those
22 injunctions already had an effect or an impact on the
23 accounting of TV Azteca and its subsidiaries.

24 THE COURT: Okay. Well, to add some more
25 complication to this, you probably are aware -- it probably

1 won't surprise you when I say this. But again, I'll just
2 ask you to take my word for it. The indenture itself
3 obviously provides very clearly that if there is a dispute
4 over the notes and the process for anything relating to the
5 indenture of the notes, that this is governed by New York
6 law and also that the matter should be litigated before a
7 New York court that the parties agreed with.

8 So I guess another thing that I'm having a hard
9 time understanding is how is the Mexican court going to look
10 at that? Because, quite candidly, whether or not somebody's
11 acceleration notice was valid or not, for purposes of the
12 indenture, we would be governed by New York law based on
13 indenture. So whether they complied with the indenture,
14 violated the indenture, the language is right under the
15 indenture, the notice was given to the right party, it was
16 given properly, et cetera, would all be governed by our
17 indenture. And the fact that there's already been two
18 proceedings going on that relate to acceleration notice that
19 seemed to be governed by New York law where the parties at
20 least for this part agreed this was going to happen before
21 the New York court, that issue anyway. Not necessarily what
22 we're here on today, but that issue. I have a hard time
23 knowing what the Mexican court is going to do with that and
24 why they would even enter those injunctions. Because it
25 seems to me at least in terms of the substantive of issue --

1 maybe not the injunctions themselves, but the substantive
2 issues that would have to be determined in those actions are
3 whether the acceleration notices were appropriately given.
4 And that seems to me to be determined under the indenture.

5 THE WITNESS: I fully agree. I believe that the
6 judge, when receiving these petitions, should have submitted
7 the parties to the jurisdiction of New York courts, as I
8 have seen in many instances in other cases. Just like when
9 it happens when there is an arbitration agreement, the judge
10 has the obligation to submit the parties to the arbitration
11 agreement.

12 However, in these circumstances, the judge did not
13 make that finding. So he decided to take jurisdiction and
14 to issue the injunctions.

15 THE COURT: It seems like two of them did.

16 THE WITNESS: Yes.

17 THE COURT: Not just one judge, two. It's
18 understandable. Okay. Assuming for the moment -- I think I
19 asked this question of Professor Mejan, too. If the
20 district court proceeding before Judge Gartephe were to
21 continue to judgement, it seems like it would need to be
22 final and non-appealable before that specific judgement on
23 account of the notes could be enforced under the process
24 before the Mexican Court. Is that right?

25 THE WITNESS: Under the process --

1 THE COURT: Homologation --

2 THE WITNESS: Commercial code and the --

3 THE COURT: Yeah, exactly.

4 THE WITNESS: Yes, it is correct.

5 THE COURT: Ook. And then how long do you
6 estimate that process taking? I think we heard Professor
7 Mejan was honest. He couldn't guess.

8 THE WITNESS: Yeah. I mean, the process, I would
9 say it's fairly simple. This process is heard as a motion
10 as an ancillary motion. So basically the moving party has
11 to file an ancillary motion with the judge. The judge has
12 to serve process on the defendant, which is expected to last
13 15 days. Then the judge will open a proceeding, a mini-
14 trial let's say, because the periods are very short. And I
15 would expect the first (indiscernible) resolution on that
16 topic, between four to six months.

17 Afterward, the losing party will have the right to
18 file an appeal, which I will expect that will be heard
19 within four months, heard and decided, sorry, within four
20 month. Afterwards, the losing party will have the right to
21 file an amparo, which is a constitutional appeal or an
22 appeal on constitutional grounds. That process will take at
23 the most one year. So my best guess is it is something
24 about one year and eight months and one year and ten months.

25 THE COURT: Okay. Thank you. That's very

1 helpful. All right. Those are my questions.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: All right. Sorry, I'm just going to
4 warn you all of something. Sorry, just my law clerk was
5 just telling me. This is just technology, nothing else.

6 We are going to actually have to take a break
7 around like 5:15-ish, 5:20, to actually go ahead and hang up
8 our phone and redial back in. Sorry about that. It's just
9 otherwise we're going to lose our technology. And also at a
10 certain point obviously we have -- our ECRO is going to
11 leave. We can keep going, but we just need to have a
12 process there.

13 Anyway, I wanted to warn people before you got
14 started because I'll probably have to tell you at 5:15 we
15 have to take a break. Do don't feel upset. If you're not
16 done with your redirect, I understand. We'll just take a
17 break for like five minutes and then we can go back on.

18 MR. COHEN: Would it be easier for Your Honor to
19 take a break now and then do it?

20 THE COURT: Would it? Oh, okay, that's fine.
21 Okay, yeah, that's fine. So how long would you like?

22 Five minutes? Yeah, we need five minutes. That's
23 it. I just need to -- we need to redial and hang up. Okay,
24 yes. Sorry.

25 (Recess)

1 CLERK: All rise.

2 THE COURT: You may be seated. All right.

3 MR. GILLER: Thank you, Your Honor.

4 REDIRECT EXAMINATION OF JESUS GUERRA

5 BY MR. GILLER:

6 Q Hi, Mr. Guerra.

7 A Hi, Mr. Giller.

8 Q Mr. Guerra, do you recall a number of questions about
9 TV Azteca's COMI?

10 A Yes.

11 Q And do you recall that there were a number of questions
12 about what type of analysis you did?

13 A Yes.

14 Q And I believe -- and the result that you reached?

15 A Yes.

16 Q And the result being that due to -- and I believe that
17 you were shown by opposing counsel Article 15, Article 15S,
18 and Article 17 (indiscernible) how you came to your opinion
19 about COMI?

20 A Yes, correct.

21 Q So first what was your decision about whether or not TV
22 Azteca's COMI was within the United States?

23 A In my opinion there is a link between COMI and
24 jurisdiction. So it is impossible to separate one from the
25 other. I would say in international practice, it is pretty

1 much what we understand to be COMI shift, where we have seen
2 entities from one place dragging other entities from
3 different places to restructure under the jurisdiction of
4 the very same court.

5 In my opinion, that is what Article 15 attempted to
6 recognize an (indiscernible) of the law, which was later
7 amended and included Article 15 and 17. That is the purpose
8 under the 2000 law.

9 Later on, in 2014, after the (indiscernible) case, the
10 law was amended to include 15 bis an addition to 17. And by
11 incorporating those additions, what Mexico tried to do is
12 opposed to having multiple insolvency proceedings in
13 multiple places, I believe what the concurso did was to
14 create let's say a controlling jurisdiction for the -- when
15 there is a concurso for the entities that belong to a
16 corporate group. So that is my understanding.

17 So when we apply the provisions of the jurisdiction to
18 the determination of the COMI, if the determination of the
19 COMI was made with respect to one of the entities that
20 belong to a corporate group, the same principals of
21 jurisdiction will apply to the determination of the COMI for
22 that effect.

23 Q And I believe you testified that the three debtors that
24 are incorporated in the United states have a rebuttable
25 presumption that the COMI is in the United States.

1 A Yes.

2 Q And how or what provisions are you relying on in the
3 LCM to demonstrate that TV Azteca's COMI is -- sorry, that
4 TV Azteca as the organization is able to have its COMI in
5 the United States seeing those three entities that were
6 incorporated in the United States.

7 A I believe we have -- I mean, the evidence is sufficient
8 to demonstrate that there are three debtors incorporated in
9 the United States. So according to Article 15, 15 bis, and
10 17 -- and again, those are Mexican law provisions. So I am
11 only opining on Mexican law.

12 For the Mexican court to find jurisdiction and
13 therefore COMI, it will be sufficient that those entities
14 are incorporated in the United States and that the judge
15 hearing the bankruptcy proceeding of those three entities
16 have jurisdiction over those three entities. That will
17 direct the rest of the corporate groups that is deemed to be
18 insolvent into the process.

19 Q And how is that? What in Article 15 allows that to
20 occur? Did you want to turn to Article 15?

21 A Sure.

22 Q I believe you can just use opposing counsel's binder.
23 The LCM is Tab 3.

24 A Yes. If I may. Article 15, second paragraph. "The
25 commercial bankruptcy proceeding of business organizations

1 are part of the same business group --" which is what I call
2 corporate group -- "shall be consolidated, but they shall be
3 processed and recorded independently."

4 Afterwards, Article 15 bis, which is a little longer,
5 provides two different scenarios. Sorry, just to be clear,
6 Article 15 is mandatory. This is a provision that applies
7 to the judge. Article 15 bis is a provision that applies to
8 the parties, to the merchant, and to the involuntary -- the
9 creditors that are filing and involuntary. So those
10 merchants that form part of the same business group may
11 simultaneously file a joint judicial declaration of
12 commercial bankruptcy without consolidation of their
13 estates. For the joint declaration of commercial
14 bankruptcy, it shall be enough for one of the members of the
15 group to meet any of the conditions mentioned in Articles
16 10, 11, and 20 (indiscernible) of this law. And that said
17 condition make it so that one or more of the members of the
18 business group is in the same situation.

19 In the case of one or more merchants that are members
20 of a business group that is facing the same situation as
21 those mentioned in the preceding paragraph, their creator or
22 creators may claim their joint judicial declaration of
23 commercial bankruptcy. First paragraph deals with
24 voluntary, second paragraph deals with involuntary.

25 In the cases set forth in this article defining a claim

1 of joint declaration of commercial bankruptcy shall be
2 conducted under one proceeding with a judge being able to
3 appoint one inspector, bankruptcy conciliator, or liquidator
4 for (indiscernible). It is inappropriate for the purposes
5 of the proceeding. So these three paragraph deals with
6 simultaneous filing.

7 The last paragraph, the joint declaration of commercial
8 bankruptcy proceeding may be added to other commercial
9 bankruptcy proceedings pursuant to what is set forth in
10 Article 15. So the last paragraph of Article 17 deals with
11 subsequent filings. So let's say there was first a filing
12 of one of the entities, members of the group, and there is a
13 subsequent filing for the rest of the members of the group.
14 And then if you look at Article 17, Article 17 contains
15 similar provisions that deal with business groups.

16 So the general provision is the district judge with
17 jurisdiction in the place where the merchant has its
18 domicile has competence to hear the commercial bankruptcy
19 (indiscernible) of a merchant except for what is set forth
20 in the following paragraph.

21 So in other words, each debtor has its own let's say
22 court or its own jurisdiction within the court of its
23 domicile except as set forth in paragraph second and third.

24 In the case of filing of claims for commercial
25 bankruptcy that represented by or against holding companies

1 that have already encouraged their subsidiaries or
2 affiliates to declare commercial bankruptcy and when the
3 filing of claims for commercial bankruptcy are presented
4 against subsidiaries of affiliates that have started the
5 process of a commercial bankruptcy of the holding company or
6 holding business association, the consolidation that Article
7 15 of this law refers will take place.

8 In this case, the judge (indiscernible), the first
9 trial shall be competent, and it will be enough to present
10 the subsequent filing of claims before (indiscernible) for
11 its submission.

12 Third paragraph. The judge of the place where the
13 company that is a member of the business group that meets
14 any of the conditions explained in Articles 10, 11, and 20
15 bis as its domicile shall be competent to hear the joint
16 commercial bankruptcy judgement referred to in Article 15
17 bis of this law.

18 In other words, what will happen under Paragraph two
19 and third is that the first judge to hear an insolvency
20 proceeding with respect to a corporate group to one of the
21 members of a corporate group is the one that will have
22 jurisdiction over the entire corporate group.

23 Q In this case, you understand -- what is your
24 understanding of whether TV Azteca is such a corporate
25 group?

1 A Excuse me?

2 Q Let me rephrase the question. Do you believe that TV
3 Azteca is the type of corporate group you just discussed?

4 A Yes.

5 Q You recall you were shown your declaration and a
6 sentence that a full concurso needs to be initiated. This
7 is in your declaration, which is Tab 1. Sorry, it's your
8 reply declaration. I apologize. So that's Tab 2, JX 130
9 for the record. Paragraph 47.

10 A Yes.

11 Q You wrote that Mejan is correct, that Article 293
12 provides that a full concurso needs to be initiated for
13 recognizing a foreign proceeding of a company that has an
14 establishment in Mexico. What did you mean by that?

15 A What I mean is under Article 293, before recognition
16 happens, a full concurso has to be initiated. In other
17 words, you have to carry on what we call an inspection
18 visit. The only proceeding under the concurso law that does
19 not carry an inspection visit is a prepacked proceeding. So
20 as opposed to -- I mean, a voluntary concurso, a voluntary
21 concurso, or a concurso under Title 12 under the auspices of
22 Article 293, there will be an inspection visit. That is
23 what I mean for full concurso. And the key words here needs
24 to be initiated. It's a key word for me, for recognizing.
25 So for recognizing it is before recognition happens. So I'm

1 not implying that after recognition there will be a full
2 concurso. That will be the case only, as I explained or as
3 I tried to explain, if the concurso court finds that the
4 Mexican court has its COMI to hear of the main proceeding.
5 Then it will open a full-fledged concurso, or what I
6 understand to be a full-fledged, or concurso with stags.

7 MR. GILLER: I want to use a demonstrative. May I
8 approach, Your Honor?

9 THE COURT: Yes.

10 MR. COHEN: Mr. Giller, could you just wait a
11 moment? I haven't seen it yet. If you could just give me a
12 second.

13 MR. GILLER: Of course.

14 MR. COHEN: Thank you.

15 BY MR. GILLER:

16 Q Mr. Guerra, obviously we've discussed the concurso and
17 enforcement process through your -- during your cross. And
18 I thought this would be helpful to ground some of the
19 questions that you received and help the explanation
20 process.

21 So when you said earlier that a concurso had to be
22 initiated, I believe you said that was in respect to -- in
23 relation to the inspection stage. Is that correct?

24 A Just let me clarify something. Concurso is for us like
25 bankruptcy is for you. It is the name of the proceeding.

1 So it is not -- what I'm trying to say is not all concurso
2 have inspection visits, not all concurso have -- I mean, I
3 am making reference to the name of the proceeding when I
4 refer to concurso, just like you understand a bankruptcy
5 case under Chapter 11 or a bankruptcy case under Chapter 7,
6 et cetera. So a concurso, a bankruptcy filing has to be
7 made.

8 Q And so assuming that there is a Chapter 11 plan that is
9 confirmed in the United States, you've testified on your
10 understanding of the first step no matter what, as evidenced
11 by box 2 in this chart, is the foreign representative has to
12 seek recognition in Mexico. Is that correct?

13 A That is correct.

14 MR. COHEN: Your Honor -- it's an objection for
15 leading. Same -- I'll adopt Mr. Qureshi's objection.

16 MR. GILLER: I'll rephrase.

17 THE COURT: Okay, thank you.

18 BY MR. GILLER:

19 Q Mr. Guerra, do you see the second box on this chart?

20 A Yes.

21 Q What is your understanding of what this represents as
22 far as the (indiscernible) in the concurso process?

23 A Well, the foreign representative goes down to Mexico
24 and seeks recognition of a foreign proceeding according to
25 the concurso law.

1 Q Does that have to happen?

2 A For recognition to happen, yes, it is a (indiscernible)
3 proceeding for recognition.

4 Q And I believe you discussed this before, but the next
5 two boxes, what do they represent?

6 A Well, the (indiscernible) representative seeks the
7 recognition. The next thing that will happen is that the
8 judge will order an admission receiving the petition for
9 recognition and requiring, depending on the circumstances,
10 the (indiscernible), or the IFT, to appoint an examiner, a
11 visitor. So the concurso court will appoint a visitor to
12 commence the examination. The visitor, as Mr. Mejan
13 described, will have the opportunity to provide a report
14 after reviewing the books and records of the debtors. So
15 that report has to be rendered within 15 calendar days, but
16 that period could be extended for another 15 calendar days.
17 So the visitor will then issue its report or will provide
18 its report to the court.

19 Q And after the visitor delivers its report to the
20 concurso court, what happens next?

21 A Well, the concurso court simultaneously -- it will all
22 happen in the very same ruling. It is what we call the
23 concurso ruling. Because in Mexico -- and this is a little
24 different from what I understand it is in the U.S. -- there
25 is a form declaration of concurso. It is not -- you are not

1 subject to concurso until you are declared to concurso. So
2 there is a judgement declaring the concurso that is according
3 to Article 43. So the judge will deliver the concurso
4 judgement or the concurso ruling. And in that ruling, the
5 judge will recognize a foreign proceeding and will make the
6 determination whether it is a main proceeding or a non-main
7 proceeding.

8 Q And there was a line of questioning about Article 43.
9 Do you recall that line of questioning?

10 A Yes, I do.

11 Q And just so the record is clear, I believe you were
12 directed to Article 43 in the fifth section of that.
13 Article 43, Section 5, which is JX 43, Page 14. And it
14 states that the declaration -- strike that. Mr. Guerra, how
15 does the language in Article 43, Section 5 interact with
16 Title 12 of the LCM?

17 A First we need to put in context Article 43. Article 43
18 is within the general provisions of the LCM. So there is a
19 difference. So, for example, it is just like you will not
20 see in the general provisions a reference to Title 12. But
21 Title 12 has to be consistent with the general provisions of
22 the LCM.

23 So what Article 43 provides for -- and let me open this
24 -- is that a concurso judgement has to be rendered. There
25 has to be a declaration of the merchant in concurso. And

1 the judgement that Article 43 of this statute refers to
2 shall also include the declaration that the foreign
3 proceeding in question is recognized.

4 So in other words, what the second paragraph of Article
5 93 is making reference to is to the concurso judgement. And
6 the judge will have to issue the concurso judgement. And
7 one of the things that the court will have to decide is
8 those things that are provided for under Article 296. It
9 is, number one, recognition of the foreign proceeding. And
10 second, the determination on whether it is a foreign main
11 proceeding or a foreign non-main proceeding.

12 Q Is this the recognition stage?

13 A Yes. It is the moment -- the concurso judgement is the
14 very same moment when actual recognition happens.

15 Q So following the recognition stage, it's a main foreign
16 proceeding, what happens?

17 A Let me go back to the chart. As we discussed, there is
18 two possibilities. There is a foreign main proceeding or a
19 foreign non-main proceeding. In your hypothesis, we are
20 recognizing -- in Mexico, it is recognized a foreign
21 proceeding as a foreign main proceeding. What will happen
22 is the judge will appoint a conciliator, examiner. You
23 don't have those officials in U.S. proceeding. But the
24 visitor, the conciliator, and the liquidator are officials
25 that aid to the court. They serve a purpose to the court.

1 So the court does not deal with day-to-day things. They
2 deal with those things the conciliator or the liquidator
3 depending on the estate, the processes.

4 So in this case, considering that it is coming from a
5 Chapter 11, there will be a conciliator appointed to oversee
6 the debtor.

7 And it will be the entity or the person who will be in
8 contact with a foreign representative. According to Article
9 282, the Mexican conciliator, visitor, or liquidator are
10 deemed to be the Mexican firm's representative.

11 So the foreign representative will be requesting these
12 officials to take action in court.

13 Q And what action would the foreign representative be
14 seeking?

15 A For example, I mean, the foreign representative could
16 require the conciliator to seek injunctions or to seek a
17 specific relief from the Mexican court. If the conciliator
18 fails to act at the request of the foreign representative,
19 then the foreign representative could actually go and file
20 something with the court complaining that the conciliator is
21 not doing his job.

22 Q And with regards to the Chapter 11 plan, what would the
23 foreign representative be doing?

24 A Yes. The foreign representative will be the one
25 entitled to seek enforcement.

1 Q And there had been a discussion earlier with opposing
2 counsel regarding the role of the IFT in this process. Do
3 you recall that?

4 A Yes.

5 Q And specifically you were asked about whether the IFT
6 had to appoint the conciliator. Do you recall that?

7 A Yes.

8 Q Is there anything that would -- what is your
9 understanding of whether or not the IFT could appoint the
10 conciliator in the process you just outlined?

11 A Well, I definitely believe that the conciliator -- that
12 the IFT will have the right to appoint a conciliator for
13 respect to those two entities that have the concession
14 title. And according to Article 15 of the law I believe the
15 judge has the authority to -- sorry, I need to review the
16 Spanish version.

17 Q I think I can make this a little bit easier for Mr.
18 Guerra.

19 Is there anything that -- I think you just said this,
20 but what -- is there anything that prevents the IFT from
21 fully being able to appoint a conciliator?

22 A No.

23 Q So turning quickly to the non-main proceeding. So if
24 there is a recognition as a non-main foreign proceeding,
25 what is the first step that happens?

1 A Well, assuming Mexico has the COMI of the entities, the
2 next thing that will happen is the judge will order the
3 opening of the conciliation stage, will ask the IFT to
4 appoint a conciliator. The conciliator will be appointed.
5 Claims recognition process will take place. And eventually
6 a claims recognition and granting a priority judgement will
7 be issued.

8 Q Thank you I actually forgot to ask a question before,
9 so I apologize. Just go to back to the main foreign
10 proceeding for a second.

11 A Yes.

12 Q There has been a line of questioning about that any
13 plan that had to be -- any plan that could be enforced in a
14 Mexican court had to comply with public policy. So you
15 recall that?

16 A Yes.

17 Q If the foreign representative couldn't forward a plan
18 that did not comply with public Mexican public policy, would
19 the concurso court have a way to address that?

20 A Yes.

21 Q How?

22 A Well, the Mexican court will have -- in making a
23 determination whether it violates Mexican public policy, the
24 judge will make the determination. Yes, it meets the
25 standard, the judgement is enforced. If it does not meet

1 the standard, the judge has two options, either to reject it
2 or to amend it.

3 Q So it's your view that the -- so is it your view that
4 the Mexican court as the power to amend a proposed Chapter
5 11 plan to comply with public policy?

6 A Yes. If the judge finds that it does not comply with
7 Mexican public policy, it is my view that the judge will
8 most likely amend it. Because when looking at these
9 provisions, you have to consider there are two principals
10 under Article 1 that are very relevant. Though the actions
11 by the court shall be held considered procedural economy and
12 speediness. So -- and if you look at Article 285, it
13 provides the international principles of enforcing cross-
14 border insolvency proceedings, insolvency awards or orders.
15 So I believe that the most desirable outcome for serving
16 this process and complying with these principles is for the
17 judge to amend the provisions that he believes could
18 potentially or actually violate Mexican public policy.

19 Q All right. So turning back to the non-main foreign
20 proceeding, I believe you said that a conciliator would be
21 appointed. And you just testified that that could be by --
22 the IFT could appoint that person, correct?

23 A Correct.

24 Q What would happen next?

25 A Well, the conciliator, as in any domestic concurso,

1 will begin with a claim recognition process, provide a
2 provisional list of claims. Objections will be allowed by
3 the debtor or the merchant and the creditors. And then a
4 final list of claims will be provided to the court.

5 Finally, the court will decide or will issue based on all
6 that a claims recognition ranking and priority judgement.

7 Q And what happens after the judgement for recognition,
8 ranking, and priority of claims?

9 A The conciliator will begin the negotiations between the
10 Debtor and the creators. And that is exactly the point
11 where I believe that the conciliator will use a foreign
12 restructuring plan already approved as a starting point for
13 those negotiations. Because, again, it is consistent with
14 principles of procedural economy and speediness.

15 Q So what will happen next? Or what can happen next?

16 A Well, a restructuring agreement is reached or not
17 reached. If it is reached, happy ending for everyone. That
18 is restructuring or a restructuring plan is approved. If it
19 is not, well, liquidation happens.

20 Q So what -- I think the liquidation has a different term
21 or means a different thing possibly in Mexico to the United
22 States. So can you describe the liquidation stage for us?

23 A Yes. I mean, I have to explain liquidation with this
24 definition. The purpose of the liquidation is to sell the
25 Debtor's assets, its business operations, and everything in

1 its power for repayment of the creditors.

2 Q Does it have an overall duty, the liquidator?

3 A Yes.

4 Q What is that duty?

5 A Well, the liquidator will become the manager of the
6 debtor's assets. He has to comply with his duties, what we
7 call in Mexico the good father of a family. So that is the
8 standard. So you have to be a good father of a family. And
9 he has to maximize value of the assets.

10 Q And there was a Chapter 11 plan in existence already,
11 as there would be in any foreign non-main proceeding, what
12 is your view on how the liquidator might maximize value?

13 A Well, as a general rule, the liquidator has to sell all
14 the debtor's assets through an auction process, an auction
15 process that will normally dilute a lot of value because it
16 is a complex process, it requires holding an auction,
17 setting a price, et cetera, et cetera. An auction process
18 under the concurso.

19 The alternative is there is a provision -- there are
20 two provisions, I believe Article 25 and 28, that provide
21 alternatives for the liquidator to sell the assets.

22 When, for example, we have assets that require
23 immediate selling because failing to do so will destroy
24 their value -- let's say bananas. If they are not sold,
25 they will rot. So they need to be sold. So in that case,

1 the conciliator -- the liquidator does not require court
2 approval to sell those bananas. Right? It only requires to
3 exercise his duty to maximize value.

4 There is another alternative, which is when he believes
5 there is a process that provides more value to creditors and
6 potentially to the debtor. So that is what I believe, that
7 the liquidator could use the restructuring plan approved or
8 the plan confirmed in the U.S. as an alternative means for
9 the liquidation. Because it will obviously bring more value
10 to all the parties involved in the restructuring.

11 Q There were a number of questions about the injunction
12 that you received. Do you recall those questions?

13 A Yes.

14 Q When I say the injunctions, I mean the two injunctions
15 against petitioning creditors and the indenture trustee.

16 A Yes.

17 Q I believe you had a number of questions about the
18 injunction in the Ninth Circuit, his is the second
19 injunction, and whether or not it was potentially being
20 enforced because -- or whether it could be enforced because
21 it has not been served to anyone yet. Do you recall that?

22 A Yes.

23 Q And I believe there was a line of questioning that it
24 has to go through a rogatory process. Is that right?

25 A Yes, for service of process.

1 Q If it was going through -- if TV Azteca was seeking to
2 serve the petitioning creditors of the indenture trustee
3 through the letters of rogatory process now, is there any
4 way that petitioning creditors or the indenture trustee
5 would know that?

6 A No.

7 Q There was also a line of questioning about the fact
8 that the injunctions were ex parte injunctions. Do you
9 recall that?

10 A Yes.

11 Q And that ex parte injunction is a normal process in
12 Mexico, correct?

13 A Yes.

14 Q To your knowledge, does Mexican procedure prevent a
15 party that obtains an ex parte injunction from notifying the
16 parties that are subject to the injunction that the
17 injunction exists?

18 A I'm very sorry, I think I don't understand the
19 question.

20 Q I'll rephrase the question. Is there anything that
21 prevented TV Azteca from notifying the petitioning creditors
22 that this injunction existed?

23 A No.

24 Q I want to show you the injunction. It should be in
25 your binder I believe at Tab 9. So this is JX 30 for the

1 record. This is the first injunction, what we're calling
2 the COVID injunction.

3 A Yes.

4 Q I believe there was some testimony regarding its
5 application. Can you please turn to page 36 of 40?

6 A Yes.

7 Q And number three says to maintain the existing factual
8 situation and to this end the prohibition to the co-
9 defendant to initiate and/or file any proceeding for the
10 collection and/or payment of the unpaid principal of the
11 bonds issued under the issuance agreement dated August 9th,
12 2017. What is your understanding of what that precludes the
13 petitioning creditors or the indenture trustee from doing?

14 A Can I consult with the English version of the
15 injunction?

16 Q Yes.

17 A Well, it's a prohibition to bring any lawsuits aimed at
18 the collection of the debt, of the notes.

19 Q How broad do you view them?

20 A Extremely broad.

21 Q Would it include a concurso proceeding?

22 A In my view, yes, it is. It will.

23 Q I want to go to number six. It says to maintain the
24 existing factual situation and to this end the suspension of
25 all payment obligations arising from the issuance agreement

1 dated August 9th, 2017. Do you see that?

2 A Yes.

3 Q And what is your understanding of how this prohibition
4 in that paragraph affects the insolvency test with regards
5 to filing an involuntary concurso?

6 A Well, basically it is preventing the debtor to makes
7 any payments. And therefore, it prevents the debtor to
8 consider the debt to be due and payable.

9 Q And what does that effect on an involuntary concurso?

10 A Well, there will be no sufficient due and payable
11 obligations to meet the first objective test or the first
12 objective insolvency test.

13 Q What would happen if the petitioning creditors violated
14 the injunctions or the indenture trustee?

15 A Well, it is a long process. The first time that they
16 violate the injunctions, they will be fined by the court. So
17 they will be fined by the court. An actual fine, monetary
18 fine. And the judge will require them to obey by the
19 injunction. If they fail to abide by the injunction, they
20 will be fined for a second time. And the judge will again
21 ask them to comply with the injunction. If they fail to
22 comply with the injunction again, the judge will issue a
23 third fine, will impose a third fine on the person violating
24 the injunction. And will require them to obey by the
25 injunction. If they continue to fail obeying the injunction

1 or violating the injunction, then the court will recommend
2 the case to the attorney general for investigating the crime
3 of disobedience.

4 MR. GILLER: No further questions, Your Honor.
5 Thank you, Mr. Guerra.

6 THE COURT: Thank you.

7 THE COURT: Thank you. Recross?

8 MR. COHEN: Very briefly, Your Honor. I am
9 mindful of the time.

10 THE COURT: No, that's all right. We're here. No
11 worries. I knew what I was in for when I took this job.

12 RECROSS EXAMINATION OF JESUS GUERRA

13 BY MR. COHEN:

14 Q Mr. Guerra, look at the demonstrative that Mr. Giller
15 showed you. Did you participate in the preparation of this?

16 A Yes. I read it.

17 Q Did you read it before it was finalized? Did you
18 review it before it was finalized?

19 A Yes, I think so.

20 Q Look under main proceeding. You have as a possibility
21 a conciliator would be appointed after the judgment of
22 concurso for a foreign main proceeding, right?

23 A Excuse me? Can you...

24 Q Conciliator appointed as auxiliary of a concurso court

25 --

1 A Yes.

2 Q Okay. Have you anywhere in your two declarations ever
3 mentioned the possibility that a conciliator could be
4 appointed after a judgement of concurso -- admission to
5 concurso in a foreign main proceeding?

6 A No.

7 Q When did you decide to add that to your opinion? After
8 the deposition?

9 A Yes.

10 Q And you just testified in response to Mr. Biller's
11 questions about various fines and second violations and
12 third violations and criminal proceedings. Can you show me
13 where you discussed that , your two declarations, including
14 the one you submitted in August of this year?

15 A I was not asked that at the time.

16 Q So you decided to add that after your deposition?

17 A I was asked today about it.

18 Q Now, if you look please at your reply declaration back
19 at Paragraph 47, the one that I showed you and Mr. Giller
20 returned to, supplemental declaration, paragraph 47.

21 Here what you're doing is you're responding to
22 Professor Mejan's opinion that a full concurso would be
23 required in a case of recognition of either a main or a non-
24 main proceeding in Mexico, correct?

25 A No, that is not what I said.

1 Q So when you say Mejan is correct that Article 293
2 provides that a full concurso needs to be initiated, what
3 you meant was a full concurso of the non-main and a half-
4 full concurso for a main?

5 A No. I think -- let me explain what I said. Mejan is
6 correct. That is the one thing that I said. Mejan says
7 Article 293 provides that full concurso needs to be
8 initiated for recognizing any foreign proceeding of a
9 company that has an establishment in Mexico. So this full
10 concurso refers to something that happens before
11 recognition. So what it means is that it requires either --
12 I mean, at this point we will not -- whether it is a foreign
13 main proceeding or a foreign non-main proceeding. This is
14 before recognition. So before recognition, a full concurso
15 needs to be initiated. At the full concurso under these
16 circumstances, I mean, one that requires an inspection
17 visit. After concurso is declared, after recognition
18 happens, there are these two options.

19 Q One involves a second full concurso and one involves a
20 less full concurso, main or non-main?

21 A Let's put it differently. Looking at it from this side
22 of the border, a foreign main proceeding or a foreign non-
23 main proceeding.

24 Q When you said you agreed with Professor Mejan that a
25 full concurso needed to be initiated, what did you mean by

1 the word full?

2 A I mean one that requires inspection visit.

3 Q That's what full means to you.

4 A Before recognition, yes.

5 Q And you understood Professor Mejan to be making the
6 same point that you agree when you say he was correct? You
7 think he was referring to an inspection only?

8 A I really don't know what he was referring to. I am
9 telling you what I understand.

10 Q But you did say under oath that Professor Mejan was
11 correct, right?

12 A Yes, because I believe needs to be initiated for
13 recognizing any foreign proceeding. So that is before
14 recognition.

15 Q A different topic. You testified to Mr. Giller's
16 questions that you see a link between COMI and jurisdiction,
17 right? Did I hear you correctly?

18 A Yes.

19 Q You could be subject -- a company can be subject to
20 jurisdiction in multiple jurisdictions, correct?

21 A Correct.

22 Q But only one COMI, right?

23 A Yes.

24 Q And in your description of Articles 15, 15 bis and 17,
25 I want to make sure I understand what you're saying. Are

1 you saying that if a judge is asked to recognize a company
2 that has an establishment in Mexico, if one of the debtors
3 has a COMI in the U.S., he is absolutely required to apply
4 that to the whole group, correct?

5 A Yes.

6 Q And if he is asked to recognize a proceeding involving
7 a group of companies with an establishment in Mexico and 25
8 of those companies have COMI in Mexico, he is required to
9 make that a foreign main proceeding because the COMI of the
10 one subsidiary trumps the COMIs of all the others, right?

11 A Yes.

12 MR. COHEN: Nothing further, Your Honor.

13 MR. GILLER: Nothing further.

14 THE COURT: Okay. All right.

15 MR. GILLER: The petitioning creditors have no
16 further witnesses.

17 THE COURT: Okay, thank you. All right. So I
18 guess we should talk about tomorrow. Sorry, excuse me. My
19 apologies, Mr. Guerra. You are free to step down. Again,
20 thank you for coming. I know coming all of this way to
21 testify before the Court, we very much appreciate it. And
22 you may go ahead and step down.

23 THE WITNESS: Thank you very much, Your Honor. It
24 was a pleasure.

25 THE COURT: Okay. So I guess what time would you

1 like to schedule your closing arguments? Because I believe
2 that's all we have left, right? Do you want to --

3 MR. COHEN: Can we confer for a moment, Your
4 Honor?

5 THE COURT: Yes. Go right ahead.

6 MR. COHEN: Thank you.

7 THE COURT: Feel free. Confer.

8 MR. COHEN: So we have conferred and we would
9 propose a start of 1:00 p.m. tomorrow.

10 THE COURT: Okay, that's fine. No problem. That
11 was fine. We will let our ecro assistant know before he --
12 okay. And I guess for those of you on the phone, I think
13 we're going to be finished with court shortly. And so when
14 we hang up on you, you'll know why. Because we ended for
15 today. And that will be commencing tomorrow at 1:00.

16 MR. COHEN: Your Honor, just a procedure question.
17 Would you like us to put any kind of a notice on the docket
18 that we're starting at 1:00 tomorrow?

19 THE COURT: It's probably a good idea just for
20 parties.

21 MR. COHEN: We'll do that, Your Honor.

22 THE COURT: Okay, thank you. It's no problem, but
23 obviously parties have been spending the time listening to
24 this now. And I suspect because of the press that probably
25 other people know, too. But we don't know. So I think it's

1 a good idea. Okay.

2 Is there anything else that the parties wanted to
3 discuss before we adjourn for the day? Just asking.

4 MR. GILLER: Nothing further, Your Honor. Thank
5 you.

6 THE COURT: Give me just one second to gather up
7 my belongings, and I will leave. Okay. Thank you all. I
8 want to wish you all a good night.

9 (Whereupon these proceedings were concluded at
10 5:44 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: September 1, 2023